The nexus between judicial bias against Indigenous Australians and community xenophobia

by

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ABSTRACT

This dissertation is a scholarly reflection of my journey as an Aboriginal man who fought unsuccessfully with judges at every tier in Australia's domestic courts to have a racist public sign displaying the N-word removed at a premier sports venue. Perplexed and in need of answers on the reasons why learned judicial officers in these enlightened times would not be of same thought on the need to eradicate from public space a relic of a racist past, I undertook further research. It was from these investigations on the effects of judicial encounters of other Indigenous Australians in courts of law around the nation that I learnt of the consistency of our shared experiences of unabashed bigotry and bias from magistrates and judges immersed in white privilege.

My research confirmed that once inside the demure surrounds of a courtroom setting immersed with cultural symbols of indifference, many Indigenous people on trial on criminal matters, irrespective of the triviality of their transgression, face the indignity of custodial sentencing. Even when judicial representatives strive to apply the law – equality for all – they will inadvertently be applying Eurocentric beliefs and values. This Anglo Celtic exemplar on societal codes of conduct from which today's judicial officers were nurtured and influenced by is the principal explanation to why Indigenous youth, women and men are incarcerated at appallingly disproportionate rates to that of their mainstream counterparts.

In finding no evidence to the contrary of First Nations People having a predisposition for criminal activity in life today or an affliction from birth, I conclude the answer to my vexed question rests entirely in the inherent proclivity of judges in assuming an unwavering cultural bias when ruling on race-based matters before them.

It is therefore the proposition of this dissertation that judicial officers are no different from any other career professional whose outlook on life is shaped by community socialisation practices experienced in their lifetime. Over time Whiteness – never having to consider your own racial identity – becomes unexceptional as it morphs into a community norm and confirms my hypothesis: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia*.

CERTIFICATION OF THESIS

I certify that the ideas, experimental work, results, analyses, software and conclusions reported in this thesis are entirely my own effort, except where otherwise acknowledged. I also certify that the work is original and has not been previously submitted for any other award, except where otherwise acknowledged.

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Signature of Student Date

ENDORSEMENT

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Signature of Supervisor/s Date

In memory of my parents

Jean Hagan

1937 – 2000

and

Jim Hagan

1932 – 2016

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This research would not have been possible without the support of my legal team headed by lawyer Peter Black and senior counsel Ernst Willheim. Their unwavering support, on a pro-bono basis, throughout my decade-long battle to remove the N-word from a public sign in my hometown of Toowoomba was crucial.

I also wish to acknowledge the valued advice from my PhD mentors: supervisor Dr Anna Hayes and principal supervisor Dr Libby Connors. In particular I pay tribute to Dr Hayes for her steadfast, honest and challenging assessment of drafts of my dissertation and Dr Connors on her critical oversight of academic rigour along with warmth of support, encouragement and generosity of time over the five years of my research journey.

Most importantly, I thank my family who have had to put up with me for the initial 10 years of my legal campaign – that proved the inspiration for this dissertation – and then the five subsequent years it took me to research and validate my hypothesis.

In particular I wish to offer special praise and gratitude to my wife, Rhonda, and our children Stephen Jnr and Jayde. Without Rhonda's endorsement I would not have fought my David and Goliath legal battle against the might of civic leaders in my hometown, and indeed the rest of the nation. Rhonda remained stoic in her support of me when my back was up against the wall with sinister attacks from all sections of society to my public campaign. My son Stephen Jnr and daughter Jayde, who were primary school children when my campaign began, never complained of missing out on spending quality time with me to competing legal interests.

I also acknowledge my parents Jim and Jean and my siblings Pam, Jimmo, Susan and Lawrence and their children for believing in my audacious, yet precarious, journey when many of their friends and associates were demonising me for bringing the race-based case to the forefront of public debate in their conservative city.

Sadly my mother passed on during my legal campaign and later my father during the final edits of my PhD and as such I dedicate this dissertation to them.

Notation

Indigenous referencing

Indigenous: a term readily interchangeable with the words Aboriginal; Aboriginal and Torres Strait Islander; First Nations People; and Our Mob.

Yumba: an Aboriginal fringe camp/humpy located on the outskirts of town, usually out-of-sight-out-of-mind.

Terms used:

Whiteness theory: a process of making white culture and political assumptions and privileges visible so that whites do not assume that their own position is neutral or normal.

Nexus: a connection or series of connections linking two or more things.

Racial bias: when personal or group bias against someone occurs due to his or her race.

Normativity: behaviour based on what is considered to be the normal or correct way of doing something.

Racialize: an act of imbuing a person with a consciousness of race distinctions or of giving a racial character to something or making it serve racist ends.

Xenophobia: a strong antipathy or aversion to strangers or foreigners of a different race, religion and/or language.

Bigotry: a complete intolerance of any creed, belief, or opinion that differs from one's own.

Colonisation: ongoing process of control by which a central system of power dominates the surrounding land and its people.

Veiled whiteness: Aboriginal people of fair complexion, notably with pronounced European appearance, suppressing their racial origin for privileges afforded them by being viewed and identified as white.

List of Acronyms and Abbreviations

ACC – Aboriginal Coordinating Council

ADC – Aboriginal Development Commission

AFL – Australian Football League

ALO – Aboriginal Liaison Officer

ALS – Aboriginal Legal Service

ATSIC – Aboriginal and Torres Strait Islander Commission

CDEP – Community Development Employment Program

CEC – Community Education Counsellor

CIB – Criminal Investigation Branch

CJC – Criminal Justice Commission

DAA – Department of Aboriginal Affairs

DEET – Department of Employment, Education and Training

DFA – Department of Foreign Affairs

DPP – Director of Public Prosecutions

Go8 – Group of Eight universities

HREOC – Human Rights and Equal Opportunity Commission

KKK – Ku Klux Klan

MMG – Maguni Malu Kes

PM&C – Prime Minister and Cabinet

RDA – Racial Discrimination Act

RSL – Returned Services League

STF – State Tripartite Forum

TSGT – Toowoomba Sports Ground Trust

TSI – Torres Strait Islander

UN – United Nations

UNCERD – United Nations Committee for the Elimination of Racial Discrimination

USQ – University of Southern Queensland

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Chapter 1: Introduction

1.1 Background

Minority groups, especially those of Australia's Indigenous community, are often viewed by mainstream society as infringers of societal codes of conduct and are inadvertently singled out by law enforcement agencies and in turn, as is often the case, gain partial attention in judicial determinations. A cursory glance of the history pages of first contact in Australia and the ensuing colonisation process provides graphic accounts of large scale Indigenous incarceration in prisons and state run missions (Reynolds 2001, Pilger 2004) on race-based dubious charges.

Although there are myriad examples of Australia's recent arrivals and its Indigenous population peacefully co-existing in good times (Howie-Willis 1994) and in trying circumstances (Harman 2012, Ryan 2012) against draconian government policies designed to their detriment (Cowlishaw and Morris 1997), there is that one constant of bigotry, however, that continues to permeate the consciousness of most Australians today. This subliminal bigotry has abated little in the past 220+ years of white settlement (Perkins 2008) and often rears its ugly head to undo all the good work of enlightened leadership demonstrated by successive Prime Ministers in Gough Whitlam and Malcolm Fraser during the 1970s and 1980s respectively, from divergent political vantage, but united in their vision to improve the lives of Indigenous Australians (Menadue 2011).

Broadly this research was prompted by that latent xenophobia Indigenous Australians experience whenever they intentionally or unconsciously scratch the surface of Australia's racist underbelly (Elder 2003). More specifically the research for this dissertation was motivated from experienced first-hand offence caused by the visual ugliness of the epithet *E. S. 'Nigger' Brown Stand* on a public sign that I viewed on a grandstand when I attended a rugby league game at the Athletic Oval complex in my hometown of Toowoomba, Queensland with my young family in 1991 (Hagan 2005, O'Keefe 2008). I personally found the sign grossly offensive and an insult to people of colour, particularly Indigenous Australians, and took it upon myself to ensure its eventual removal (Bita 2008, Hagan 2007, AAP 2008).

It was the unforeseen and protracted decade-long legal battle of *Hagan v Trustee of the Toowoomba Sports Ground Trust* (2000) that changed my perspective of Australia's judiciary broadly and the judicial figures that made determinations on my original court case, and subsequent appeals, specifically (2000, 2001, 2002). The N-word case's lengthy legal campaign (Willheim 2003) also gave me valuable material from direct contact and secondary sources, to support my hypothesis of racial bias, shaped by community xenophobia, that prevails unabated within Australia's judicial ranks today.

It is the proposition of this dissertation that judicial officers are inherently racist, premised on the fact that they are no different from any other career professional whose outlook on life is shaped by socialisation practices experienced in their lifetime from unsympathetic 'white' communities imbued with xenophobia.

1.2 Rationale for the topic

The rationale of this research is to identify a commonality of factors derived from conservative community values that has the causal effect of unduly influencing the judiciary in cases involving Indigenous litigation.

My hypothesis – *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia* – will be tested by the findings of this research.

A considerable body of research underscores that Indigenous Australians experience discrimination in all facets of life disproportionate to that encountered by their white counterparts (Pholi, Black et al. 2009, Tilbury 2009). This high level of marginalisation is incontrovertibly shown through a multiplicity of daily representations of Indigenous people before a magistrate or judge in courts of law throughout the nation (Weatherburn, Snowball et al. 2008).

Noongar human rights lawyer Hannah McGlade (2012) in arguing her case of judicial bias against Aboriginal women in Australia referred to the 1980 Northern

Territory case Lane (Unreported NT Supreme Court, May 1990) when Justice Gallop commented in sentencing three Aboriginal men for the rape of an Aboriginal woman:

> There is evidence before me, which I accept, that rape is not considered as seriously in Aboriginal communities as it is in the white community … and indeed the chastity of women is not as importantly regarded as in white communities. Apparently the violation of an Aboriginal woman's integrity is not nearly as significant as it is in a white community (McRae, Nettheim and Beacroft cited in McGlade 2012 p. 141).

If the comments attributed to Justice Gallop are not his direct quote from the court's transcript one would be forgiven for concluding that it was a third party's exaggerated anecdotal slant such is the gravity of the inference to be drawn from his views on the subject of the court case he was presiding over specifically and of Aboriginal women broadly. Justice Gallop's misogynistic and racist remarks received minimal mention in mainstream media such is the blasé manner in which commentary from esteemed judicial figures of this nature is condoned by a white society immersed in xenophobia.

Pedersen and Barlow (2008) contends the level of racism in Australia has an extremely detrimental effect on the health and well-being of Aboriginal Australians as 'all forms of oppression are problematic for the victims and the perpetrators in any given society' (p. 148). It is little wonder that many Indigenous Australians feel their lives are cocooned in a malignant racial coating through first-hand experiences of blatant negative stereotyping by mainstream society on most days of the week. It is the stigmatization of Indigenous offenders, particularly as the principal transgressors of public lawlessness, that talk within communities, especially in rural and remote communities, is raised to an unhealthy level intended to scare an already anxious security-conscious white public.

Steels and Goulding (2013) asserts the language of alleged Indigenous offending rates being on the increase 'attracts airtime in the media and apparently gets votes and the consequences can be seen in the building of more prisons rather than developing safer communities' (p. 130). Over the past couple of decades all state and territory jurisdictions have registered massive rises in both the absolute numbers of those

imprisoned and the per capita use of imprisonment as a tool of punishment and control (Baldry, Brown et al. 2011).

Weatherburn (2014 pp. 6-7) argues Indigenous prisoners are in a league of their own when it comes to physical, mental and social disadvantage:

> Surveys of the New South Wales prison population show that they are less likely than non-Indigenous prisoners to have completed year 10 (27 per cent versus 57 per cent); more likely to have been sentenced to detention as a juvenile (61 per cent versus 33 per cent for men, 34 per cent versus 17 per cent for women); more likely to have been unemployed in the six months prior to being imprisoned (64 per cent versus 43 per cent for men, 87 per cent versus 60 per cent for women); more likely to have been placed in care as a child (46 per cent versus 27 per cent); more likely to have had a parent imprisoned during their childhood (31 per cent versus 12 per cent for men, 36 per cent versus 10 per cent for women); and more likely to have been previously imprisoned (81 per cent versus 56 per cent for men, 59 per cent versus 41 per cent for women).

According to journalists Sara Hudson (2010) 'the perception of the remote Aborigine is enhanced by the virtual absence (or the invisibility) of Aboriginal and Torres Strait Islanders from most suburbs and backyard barbecues'. However, in the same *Sydney Morning Herald* report she goes on to say that 'perhaps part of this invisibility is justified because there aren't really that many of them'. With 'Aboriginal and Torres Strait Islander peoples representing 2.5% of the overall Australian population yet comprising 27% and 53% of adults and juveniles in custody respectively' (ABS '12 cited in Shepherd, Adams et al. 2014 p. 281) perhaps Hudson's observation, albeit city centric and having no reference to our prison population, has some credence.

In a detailed survey of race and gender influence in an Australian court case involving a mock jury ForsterLee, R., et al. (2006 p. 192) presented findings that showed 'White Australians in a murder trial imposed a more severe sentence on the Black (Indigenous) defendants as compared to White (non-Indigenous) defendants'. They

argued the harsher sentences for the Black defendant 'may have arisen because such decisions were easy to rationalize, safe and socially acceptable' (p. 193).

As it is implausible for a survey of race and gender influence in Australian court cases to be undertaken of judicial figures, due to the ethical and regulatory constraints, my research aims to answer the vexed question of judicial race-based stereotyping. Following on from earlier findings of ForsterLee, R., et al (2006 p. 180) 'that trials fraught with racial issues were likely to tax the emotional and cognitive capacities of jurors, increasing the likelihood that decisions would be based on stereotypes', I intend to analyse, in a similar fashion, the line of inquiry of members of the judiciary to make the nexus between race-based judicial determination and community xenophobia.

There is, however, a dearth of research involving scholarly rigour that has focused specifically on judicial determinations on ambiguous race-based litigation and community xenophobia within Australian society. Except for Indigenous prisoner's input into the Royal Commission into Aboriginal Deaths in Custody (Australia. Royal Commission into Aboriginal Deaths in Custody. 1992) I found no first-hand publications, journal articles or books, from an Indigenous prisoner on this topic.

Edney (2011 p. 6) goes a step further on the lack of Indigenous prisoner contribution to the topic of the Indigenous imprisonment dialogue and states emphatically the 'omission from and silencing of the perspective of Indigenous prisoners is remarkable':

> It continues to this day in terms of the research conducted on Indigenous imprisonment. Indigenous prisoners in this penal dialogue are viewed as objects, not subjects, and their understanding of imprisonment are neglected.

It is for this reason that I have chosen to focus my research on this topic, not only as the researcher but also as the incarcerated subject, in making my case: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia*.

This research aims to elucidate a commonality of factors that distinguish the different experiences of white and non-white groups through an examination of Whiteness theory (McIntosh 1988, Roediger 1991, Frankenberg 1993). This thesis does not involve an examination of all non-white groups in Australian society but instead focuses more specifically on objectionable community and judicial experiences of Indigenous Australians against that experienced by their Anglo-Celtic Australian counterparts.

To narrow the scope of this study I have deliberately identified a civil case that does not have the usual populist bias of punishment-to-fit-the-crime logic associated with common assault, property damage or drug abuse by Indigenous offenders (Finnane and Richards 2010, Lau, Marion et al. 2012). I believe a race-based civil case, as opposed to a criminal case, is much easier to make a plausible correlation between inherent racial belief that exists within a typical Australian community and the part collective sentiment plays in influencing judicial decision-makers.

To achieve this outcome I have chosen to undertake a detailed analysis of the controversy involving the E. S. 'Nigger' Brown Stand litigation *(2000, 2001, 2002, 2003)* heard at domestic courts and an international tribunal at the United Nations respectively, to form the principal case study for the research. Supplementary studies of my family's life journey chronicling the period from my grandfather's birth in 1895 onwards as well as an exposé of the 1996 Mundingburra by-election political controversy that resulted in my conviction and term of incarceration (Hagan 2005) will be used, through my analysis as a participant observer, to further validate my hypothesis.

1.3 Key issues and questions

The legal contention of the principal case study for this research emanated from the dispute to remove the questionable epithet reference to the word 'Nigger' from the E. S. 'Nigger' Brown Stand public signage at the Athletic Oval sporting complex in Toowoomba (Hagan 2005, O'Keefe 2008). The legal proceedings of this controversial case, involving me as the applicant and the Trustees of the Toowoomba Sports Ground Trust as the respondent, commenced in July 1999 and concluded almost a

decade later when the then Queensland Minister for Sport, Judy Spence, released a media statement informing the public that 'it is not appropriate that the racist term 'nigger' be used in any way at the sports ground, stadium, venue or stand' (Fraser 2007). It was not until the following year when bulldozers had totally demolished the wooden stadium (AAP 2008) and consigned its remnants to the rubbish dump that all physical evidence of the racist sign was removed permanently from public gaze.

The questions that begs to be asked: Why did so many people, from unemployed Australians, social commentators, civic leaders and politicians fight so frenziedly, and at great personal, emotional, and for some, financial cost, to preserve a universally offensive public sign? The logical follow-up question that must also be asked: Why was it so easy for learned judges, in these enlightened times, to accept the argument that the word 'nigger' was not a relic of a racist past that needed to be discarded?

This research aims to answer these questions.

1.4 Research methodology

Hammel (2006) refers to the term methodology as 'a specific philosophical and ethical approach to developing knowledge; a theory of how research should, or ought, to proceed given the nature of the issue it seeks to address' (p. 587). As an Indigenous researcher I'm encouraged by Australian Indigenous scholars Aileen Moreton-Robinson (2000) and Martin Nakata (2007) as well as Maori scholar Linda Tuhiwai Smith (1998) who focus attention on the importance for Indigenous researchers, in adopting a methodology, to write about their epistemology and of their positioning within their world.

Moreton-Robinson (2000), a noted feminist, argues 'the life writings of Indigenous women are an extension of Indigenous relationality in that they express the self as part of others and others as part of the self within and across generations' (p. 3). Nakata (2007), a Torres Strait Islander, said he was frustrated by the implication from white scholars and government officials of 'getting it wrong' as a writer because Islander's 'understanding of events via the oral tradition, "popular memory" distorts, exaggerates, misunderstands, fabricates or simply "forgets" the actual "facts" of what

was experienced' (p. 3). Smith (1998) says Indigenous research methodologies from her perspective is dissimilar to standard Western research methodologies:

> Indigenous methodologies tend to approach cultural protocols, values and behaviours as an integral part of methodology. They are 'factors' to be built in to research explicitly, to be thought about reflexively, to be declared openly as part of the research design, to be discussed as part of the final results of a study and to be disseminated back to the people in culturally appropriate ways and in a language that can be understood' (p. 15).

Indigenous methodology, as described by Kurtz (2013) is 'Indigenous-led research by and for Indigenous peoples that is respectful, purposeful, intuitive, organic and fluid without a step-by-step framework' (p. 223). Ray (2012 p. 87), in the same vein, argues 'Indigenous methodology as taking Indigenous peoples' understanding about the world and using them to guide a learning process'.

Hart, Whatman et al. (2012) contend that 'Western knowledge systems and approaches are characterised by "learning about" Indigenous peoples and their knowledges, rather than "learning from"'. My dissertation is written through a fusion of both Western and Indigenous knowledges, yet premised on authenticating a complex and unique dissertation from an Indigenous perspective intended to engage readers to learn from, rather than learn about.

I stand with Neil Hockey (2010 p. 357-358) as a Critical Realist Indigenist researcher and endorse his response to Lincoln and Denzin that 'there is clearly potential for recognition of Indigenous contributions to the strengthening of social justice, given that their expressed commitment is to research that is socially and culturally responsive, communitarian and oriented to justice.' To this end this dissertation, using Indigenous methodology, entails four discrete elements, each described in turn below.

1.4.1 The N-word and familial nurturing processes

The methodology adopted in the first component of the analysis of my dissertation: *That there is a nexus between ambiguous race-based judicial determinations and*

community xenophobia, I have appraised, in parallel journeys, the historical application of the word 'nigger' used degradingly by British settlers post 1788 and their descendants through to the present to describe Australia's First People, through an aligned narrative of the same era, with reflections of my family's historical journey in and around Cunnamulla in far south-west Queensland. The parallel journeys' narrative of divergent ethnicities will be critiqued, in the main, from my biography, *The N Word: One Man's Stand* (Hagan 2005).

Kurtz (2013) contends story telling using Indigenous methodology 'acknowledges alternative ways of knowing, such as insights generated from dreams and storytelling' (p. 220). My dissertation, or another piece of Indigenous literature, as Brewster (2010 p. 98) would describe it, 'is an instrument for engaging whiteness and, in this process, challenging the way whiteness understands itself and its relations with its racialised others':

> Indigenous literature is an instrument for the dissemination of the knowledge of Indigenous difference; it is a technology of decolonisation and Indigenous sovereignty.

By using Indigenous methodologies (Smith 1998, Moreton-Robinson 2000) I am able to mix traditional and reflective ethnographic methods to not 'only provide insight on the "subjects" of the research, but also to analyse the researcher and researcher-other relationships, thus expanding the scope of the inquiry' (Botha 2011 p. 320). In analysing stories passed on to me by family and Elders from my community and on reflection of my lived experience, has allowed me, the researcher, to validate that aspect of my hypothesis pertaining to community xenophobia.

1.4.2 Race-based determination as the 'incarcerated subject'

For the second component of my methodology in elucidating the topic of judicial bias, I have placed myself, as a participant researcher, in the privileged forlorn position of the 'incarcerated subject'. Lavallée (2009 p. 26) argues that 'when locating ourselves within the research, it is also important to recognize that personal growth is an important end product'. 'Critical to Indigenous research,' as asserted by

Kurtz (2013 p. 219) ‘is an understanding of the significance of Indigenous knowledge and the ways in which Indigenous people make sense of life in today’s world’. By detailing the intimate moments of the ‘incarcerated subject’ I was ‘within an Indigenous research framework’ where a ‘researcher interacts with participants is of paramount importance, not unlike in community-based research’ (Lavallée 2009 p. 24).

It is from that ‘incarcerated subject’ vantage point that analysis of the lived experience of judicial bias is reflected and affirmed from a personal position of being the accused in the courtroom, to the ‘incarcerated subject’ as an inmate, to regaining my freedom and civil liberties on early release on appeal that was upheld in a higher court (Hagan 2005). The latter point affirms the nexus between ambiguous race-based judicial determinations and community xenophobia.

1.4.3 Critiquing the N-word litigation

The third aspect of the dissertation’s research methodology is my personal account of litigation played out in domestic courts in this country as well as at the United Nations. As the Indigenous researcher, and the applicant in all cases (2000, 2001, 2002, 2003), I was able to validate the political and ethical dimensions of my research on judicial bias from an advantaged viewpoint in the forward seats beside my legal team in courtrooms that heard matters pertaining to *Hagan v Toowoomba Sports Ground Trust*.

In the narrative of the N-word litigation I am, as an Indigenous researcher, ‘grounded politically in specific Indigenous contexts and histories, struggles and ideals’ (Smith 1998 p. 4). My perspective of all active players and zealous observers that I discerned inside the courtroom as well as external to courtroom proceedings within the community is critical to, and privileged by, my epistemology of the physicality of those alternating and often confronting settings.

1.4.4 Race-based judicial bias and community xenophobia

The final methodology used for analysis of my dissertation's hypothesis is critiquing judges who passed judgment in *Hagan v Toowoomba Sports Ground Trust*. I have chosen to appraise the life story of High Court Justice Mary Gaudron: the judge who made the astonishing left field 'let us assume pink persons who are offended because of any material, including, for example, a pink truck cement-mixer, they think you should use the pink – and it is called "Pinky's-Mixer" – would automatically make out a complaint' (Hagan 2005 p. 244-245). This extraordinary comment was made by the celebrated High Court Justice as one of two judicial arbiters hearing my senior counsel's application on Seeking Leave to Appeal to the High Court.

Justice Mary Gaudron's story *From Moree to Mabo* (Burton 2010) and other associated biographical material will be reviewed to highlight the subliminal levels of racism inherent in her early childhood through to her legal journey to eminence on the bench of the High Court. From my perspective as an Indigenous researcher (Smith 1998, Moreton-Robinson 2000), I will demonstrate that Justice Gaudron was oblivious to her racial privilege in her early childhood and adolescent life and remained incognizant of it throughout her distinguished legal and later judicial career.

Appraisals will also be made of an article by Justice John Dowsett *Prejudice – the judicial virus* (2010) as well as of other judges who were not involved in *Hagan v Toowoomba Sports Ground Trust* cases, but who did however make significant race-based rulings which reflect questionable traits ascribed to in my hypothesis.

As an Indigenous researcher I will 'continue to do work that benefits the community, and privileging and promoting Indigenous knowledge and methods' (Simonds and Christopher 2013 p. 2191), and in 'claiming a genealogical, cultural and political set of experiences' (Smith 1998 p. 12), make the nexus between ambiguous race-based judicial determinations and community xenophobia.

1.5 Qualitative Research Methods

This research adopts the qualitative research line of inquiry that follows a process of inductive reasoning where theory is developed (Denzin and Lincoln 2000).

The decision to use qualitative research methods (Smeyers 2001, Dickson-Swift, James et al. 2007, Dean 2013) for the dissertation was precipitated by my failure to gain the level of cooperation needed to produce critical mass quantitative data (Maxim 1999, Hummel-Rossi, McIlwain et al. 2006, Vogt 2011) through questionnaires and surveys. I felt it problematic to obtain voluntary support from my adversaries who were involved directly in litigation of the principal case study.

I believe it is not so much that a survey may not have furnished a result that is measurable, but rather, that many white Australians, especially those of Anglo-Celtic extraction, would have had difficulty expressing truthfully an innate bias against Aboriginal people, 'others', in their personal contacts with, or observations of them. This unique predicament highlights the problematic facet such an exercise would be owing to the sample study group's inability to understand their own racial privilege afforded them by merely being part of a white majority.

Creswell's (1998 p. 15) description on research methodology asserts:

> Qualitative research is an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The researcher builds a complex, holistic picture, analyses words, reports detailed views of informants, and conducts the study in a natural setting.

Choosing qualitative research methodology best enabled me to test my hypothesis: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia*, through a whiteness case study analysis of the E. S. 'Nigger' Brown controversy. As Corbin and Strauss (2008 p. 12) explain:

> Qualitative research allows researchers to get at the inner experience of participants, to determine how meanings are formed through and in culture, and to discover rather than test variables.

By using qualitative research I was presented with an opportunity to demonstrate the usefulness of conversation, discourse and document analysis in addressing key issues that I seek to explore in my dissertation (Rapley and Flick 2007). As a researcher

using qualitative research methods, Denzin (2012 p. 325) argues I have been 'historically and locally situated within the very processes being studied'.

In order to understand the historical problems of domination I have assumed the role of participant observer (Jorgensen 1989), using qualitative research methods (Simonds and Christopher 2013), to collect and analyse data in my campaign involving the E. S. 'Nigger' Brown Stand controversy. I have placed myself as the participant observer throughout the decade long legal challenges in order to analyse, through the use of whiteness theory (Frankenberg 1993, Moreton-Robinson 2000, Tascón 2008), the subliminal effects of racism being played out within courtroom deliberations, as well as how active players in the court cases react with, and to, community expectations premised on xenophobia.

Case studies were used as the primary method for my research. They are effective hypothesis development tools, argues Eisenhardt (cited in Sato 2015 p. 52), as they can be used to elaborate 'on the constructs' definition and to establish proofs for measuring these constructs'. I was a participant observer in the collation of all primary and secondary data involving the E. S. 'Nigger' Brown Stand civil action (Timseena 2009).

1.5.1 Participant Observation

Mason (1996 p. 61) refers to participant observation as the process that refers to:

> Methods of generating data which involve the researcher immersing herself or himself in a research setting, and systematically observing dimensions of that setting, interactions, relationships, actions, events and so on, within it.

The principal case study involving the E. S. 'Nigger' Brown Stand allowed me, as a participant observer, an opportunity to demonstrate my observational skills in scholarly monograph and my social participation in a personal memoir (Denzin and Lincoln 2005). My publications (Hagan 2005, Hagan 2006) and documentaries (Nimmo 2006, Hagan 2007) will be utilised to argue my hypothesis.

In studying the meanings of behaviour, language and interactions of the culture-sharing group (Creswell 1998), as the participant observer, I was able to analyse data obtained over the course of my lengthy legal campaign of the E. S. 'Nigger' Brown Stand controversy to present my findings. The ability to make sense of a rapidly changing world by using reflective accounts of ordinary people in their ordinary life within a community rather than idealized accounts (Stacey and Griffin 2005) validates my position as the participant observer. By being the participant observer I was also able to maintain social relationships and cultural identity (Nelson and Allison 2000) in participating with and in analysing relationships as played out inside and outside courtrooms in legal proceedings of the *Hagan v Toowoomba Sports Ground Trust* cases.

Timseena (2009) theorized that participant observation is an obtrusive and active method of exploring knowledge and cultures of people and that its aim is:

> To gain a close and intimate familiarity with a given group of individuals (such as a religious, occupational, or sub-cultural group, or a particular community) and their practices through an intensive involvement with people in their natural environment, usually over an extended period of time (p. 77).

Ten years is a long time to be involved in an individual project, but in my case the process of gaining the patience and confidence of a committed legal team operating on a pro-bono basis was a challenge that, in the end, proved fruitful and rewarding for all concerned. It also offered a crucial opportunity for me, as a participant observer, to gain valuable data for the dissertation.

The decade long legal campaign against the Toowoomba Sports Ground Trust also provided me with latitude to apprise their active, yet recalcitrant players who remained constant and stoic in their resolve to see my legal demise as it played out in the fervent gaze of public anticipation.

1.5.1.1 Pioneers of Participant Observation

Green (cited in Coerver 1991) credits Frank Hamilton Cushing as the pioneer of participant observation because he went beyond being a 'live-in anthropologist to become an influential figure among the Zuni people' (p. 861). Cushing explained, inadvertently, of the moment he was placed in the position of being a participant observer when he referred to his invitation by Professor Baird at the Smithsonian Institution on a hot summer day in 1879 to 'be ready to accompany Colonel Stevenson's collecting party, as ethnologist, within four days. I want you to find out all you can about some typical tribe of Pueblo Indians. You will probably be gone three months' (Cushing 1882 p. 191).

During his time with the Zunis, Cushing (1882), armed with his pencil and sketchbook, recorded all that he observed daily from the political to the personal and learned: 'of the existence of thirteen orders or societies, some of which were actually esoteric, others of a less strict nature, but all most elaborately organized and of definitely graded rank, relative to one another' (p. 28), and 'I soon became better acquainted with the domestic life of the Zunis, and learned where the governor went when he vanished through the sky-hole' (p. 202).

After a period of time living with the Zunis, Crushing (1920) observed of their leader:

> All the genius of his best birthrights – his imaginative mind and picturesquely poetic language – he devotes to the beautification of pristine wonder-tales, that he may teach his little ones, who he dearly loves, to emulate himself in seeking joy rather with the memories of a dead but known past, than in the hopes of a living but unknown future (p. 56).

Boyko (2003) acknowledges Cushing's monograph recordings of wooden artifacts recovered from a site in Florida in 1886 which he called the 'Court of the Pile Dwellers' did more than just present the contents of 'nomadic foragers at basic level of sociopolitical organizations,' it presented as 'one of the most complex societies in the prehistoric and protohistoric southeastern United States, the Calusa chiefdom that once dominated the southwest coast of Florida' (p. 119).

Bronislaw Malinowski, who wrote of his life living with the natives in the Trobriand Islands to the east of New Guinea, is viewed by Ersser (2007) as producing classic ethnography that 'gave prominence to the value of examining human conduct through close participation in the social world under study. It reflected significant departure from investigation through social detachment that sought to examine culture at a distance' (p. 97). Malinowski (1922), as the participant observer wrote of establishing himself on Omarakana (Trobriand Islands):

> I began to take part, in a way, in the village life, to look forward to the important or festive events, to take personal interest in the gossip and the developments of the small village occurrences; to wake up every morning to a day, presenting itself to me more or less as it does to the native (p. 7).

Like Cushing (1882, 1920) before him, Malinowski (1922) went against the conventional position of his peers who viewed traditional custodians as inferior natives or savages (Harman 2012) or as artifacts of the past to 'be viewed as the legitimate and natural subjects and objects of study' (Nakata 2007 p. 195-196), and instead wrote favorably of them:

> Their beliefs and practices do not by any means lack consistency of a certain type, and their knowledge of the outer world is sufficient to guide them in many of their strenuous enterprises and activities. Their artistic productions again lack neither meaning nor beauty (p. 10).

Conversely, from the standpoint of Cushing (1882, 1920) and Malinowski (1922) or of non-Indigenous Australian anthropologists, historians and present day scholars, I wrote as a participant observer, not from the traditional position of being the studied subject (Perrin and Anderson 2007) or object of study (Nakata 2007), but rather to one of author of all that I observed of a white society going about their daily business oblivious to the normativity of whiteness and the privileges afforded them of simply being part of mainstream Australia.

1.5.2 Judicial bias precedent

As a participant observer I note the words of Australian academic Dr Caroline Taylor (2004 p. 1) who also became disillusioned by her experience with the judiciary when she said they:

> Decontextualise our voices and experiences; using patriarchal stylized words and theories to break our lives into theoretical paradigms – squashed and contorted, squeezed and diminished until they are unrecognisable, even to us. At the trial I endured all those years ago – I recall being accused of the most ridiculous and offensive things about my supposed mental capacity and I remember staring straight at the barrister and saying to him: I don't even know who you are talking about anymore because I cannot recognize myself by what you say about me.

Taylor's unequivocal assessment of the court processes in her publications: *Court licensed abuse: patriarchal lore and the legal response to intrafamilial sexual abuse of children* (2004a) and *Surviving the legal system: a handbook for adult & child sexual assault survivors & their supporters* (2004b), reflects very much my appraisal and conclusions of matters pertaining to judicial bias. She also wrote about her personal experiences of the Australian legal system and theorised on how patriarchal roles and structures influenced her treatment, as a woman, by the judiciary.

Taylor's (2004a, 2004b) publications provide a practical precedent for me as they confer academic merit in revisiting personal experiences of judicial bias.

In terms of being a participant observer appraising the word 'nigger' – from a position of being the subject for derision at the receiving end of that word – my positionality and trustworthiness in my writings comes from being a proud First Australian with Kullilli traditional lineage. Harper (2009) argues that he has been, as a black man:

> [n]iggered in schools, professional work settings, and various milieus,' and feels 'niggered whenever someone labels me exceptional (meaning, I am not like "the rest of those Niggers"), when White people are visibly shocked to hear I am a faculty member of an Ivy League university (p. 705).

While the application of the questionable N-word by Harper (2009) is not something I would copy verbatim in that context, it does nevertheless offer up to readers the palpable frustration he endured daily just by defending and explaining himself as a black man of high academic qualifications living in a white dominated institution and society.

As a former academic at the University of Southern Queensland and at the University of Queensland, a Group of Eight (Go8) university, that is 'by no means a neutral space/territory for everyone' (Schwartzman 2014 p. 206), I understand what it means when some white colleagues ask 'do you work in student support?' when first introduced to me. It is a tone I am all too familiar with that has the stench of condescension that I could not possibly be smart enough to be imparting knowledge to future world leaders enrolled in their prestigious workplace. Yet it is through the racial lens of Harper (2009), a black academic at an Ivy League university in the United States who experienced similar patronising behaviour by colleagues, that I was also offered a front row seat to witness firsthand the normativity of white privilege and power in action by non-Indigenous students I taught, academics I had cause to come in contact with, as well as judges who made determination on my N-word and other legal cases.

1.5.3 USQ Human Research Ethics Committee's standards

This research was guided by the requirements of The Human Research Ethics Committee (HREC) at the University of Southern Queensland (USQ) as established and conducted in compliance with the NHMRC National Statement on Ethical Conduct in Human Research (Scott S 2015), and the Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research (Chu, Kauffman et al. 2013).

1.6 Whiteness Theory

It is my intention to test my hypothesis: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia*, by applying a detailed analysis of whiteness theory to the principal case study by looking at judicial

decisions and community backlash to my legal campaign (2000, 2001, 2002, 2003). It is also my belief that the views of Toowoomba's population, the focal point of the principal case study, are typical of the prevailing conservatism that exists as a populist position in all communities throughout Australia.

Through the study of whiteness theory (Roediger 1991, Frankenberg 1993) I am able to juxtapose racism with xenophobia to produce a constant theme of white privilege and power. A number of different views of whiteness exist in the literature. This review incorporates those varied interpretations, identified in prominent whiteness publications, to guide the current research.

Whiteness emerged as a focus of academic study primarily in the United States as early as the 1980s. *White women, race matters*: *the social construction of whiteness,* by Ruth Frankenberg (1993) and *The wages of whiteness* by David Roediger (1991) are two seminal books that highlight whiteness theory. Eminent feminist scholar Frankenberg (1993 p. 8) on the one hand examines white women's thoughts 'about interracial relationships as *idea* and the racialized constructions of masculinity, femininity, identity, and community that flow from a dominant discourse against interracial relationships'. Roediger (1991) on the other hand writes on experiences of the white working class – principally men – through an analysis of 'the role of race in defining how white workers look not only at blacks but at themselves; the pervasiveness of race; the complex mixture of hate, sadness and longing in the racist thought of white workers; the relationship between race and ethnicity' (p. 5).

Whilst Frankenberg (1993, 1997) and Roediger's (1991, 1994, 1998, 1999, 2005, 2007) influential books focus essentially at whiteness from gender specific angles, Peggy McIntosh's (1988) emphatic essay *White Privilege: Unpacking the Invisible Knapsack* – credited as one of the first articles written by a white person on the topic of whiteness – studied white people as a distinct group and made salient reference to their subliminal privileges as 'an invisible package of unearned assets which I can count on cashing in each day, but about which I was "meant" to remain oblivious' (p. 1). McIntosh (1988) made the analogy in her paper of the accumulation of white privileges to having an 'invisible knapsack' (p. 1) and her reference to privilege, by itself, of simply conferring 'dominance because of one's race or sex' (p. 2). Zeus

Leonardo (2005), in appraising McIntosh's views on conferred dominance makes the critical point that: 'It is possible to discuss conferred dominance because there are existing structures of domination that recognize such benefits, albeit unearned' (p. 40). For these unearned privileges to be 'cashed in' at societal level there must be subliminal social structures that recognise and offer a place of vantage (McIntosh 1988, Frankenberg 1993, Leonardo 2005).

A normativity of whiteness in rural Toowoomba (Marriott 1960, Dansie 1978) was patently obvious with the acceptance, without challenge, of Edward Stanley Brown's hideous nickname 'Nigger' hanging authoritatively as a public epitaph in the E.S. 'Nigger' Brown Stand sign back in the early 1960s, such was the political white landscape devoid of social compassion for 'others'. However, the notion that his nickname should be time-honoured in the 21st Century when the rest of the world is championing the rights of its non-white citizens, including the election of Barack Obama in 2009 as the first ever African American president of the United States of America, and re-elected in 2012 (Callinan 2014), underscores the ubiquity of xenophobia in Australia today.

Those social structures that condoned the maintenance of a commandingly racist epitaph in Toowoomba into the 21st Century speaks volumes of a community immersed in whiteness, and still frozen in time. Cynthia Levine-Rasky (2000) describes whiteness as being 'more than the sum total of white privilege, white power, white ethnicity. It is a phenomenon produced by and productive of social contests of power' (p. 285). The fact that generational change in civic leadership in Toowoomba since the erection of the sign in 1960 had failed to diminish communal standing, on this contentious issue, is testimony to the community's indifference to the feelings of the cultural 'Other' and accentuates their identity as an insular white ultra-conservative city.

Australia's leading Indigenous scholar on whiteness, Professor Aileen Moreton-Robinson, in her influential publication *Talkin' up to the white woman: Indigenous women and feminism* (2000 p. 26) contends 'white race privilege and the oppression of Indigenous women, men and children were legitimated by the state and were

connected to property and power' and in that vein of racial fractionation of why and how:

> [i]n theory white race privilege will remain uninterrogated as a site of domination, because whiteness is not positioned as racial location and identity (p. 61).

The subliminal coercive influence of Toowoomba's civic leadership, through its vast resources of finance, law and the media, has ensured the acquiescence of whiteness (Claremont 2004) by many Indigenous residents, that has changed little since 1840 when Patrick Leslie became the first recorded white man to forcefully settle on the Darling Downs, on the lands of the Jagera, Giabal and Jarowair peoples (French 2009).

The conferring of dominance, alluded to by Leonardo (2005) on development of McIntosh's (1988) whiteness narrative, had seamless fertile grounds in Toowoomba, an agricultural community and service centre 140 kilometres west of Brisbane with a regional population in excess of 160,000 people that is expected to hit an estimated 240,000 in 2031 (Calcino 2012). Here, recognized structures of dominance that cultivate the sprouting seeds of racial intolerance are unmistakable (Alford and Alford 1990).

Tony Koch (cited in Nimmo 2006), multi-award winning chief reporter of *The Australian*, refers to Toowoomba as 'God's waiting room … where a lot of rural people, graziers and all come to live, in acknowledgement of the number of aged care and health services on offer for the aged'.

Toowoomba, I contend, is fortified by political and social conservatism (French 2009) that functions as a subliminal enabler for more insidious acts of whiteness to thrive unchallenged, in the main, by its majority white populace. Throughout the decade long court cases those subliminal structures of dominance dispensed adverse consequences to my family, my supporters and me.

My audacity to challenge, in 1999, Toowoomba's conservative civic leaders to remove the offending word 'Nigger' from the E. S. 'Nigger' Brown grandstand (O'Keefe 2008), provoked a reaction that can best be summed up through the commanding words of eminent African American feminist bell hooks (1989):

> Black people working or socializing in predominantly white settings whose very structures are informed by the principles of white supremacy who dare to affirm blackness, love of black culture and identity, do so at great risk (p. 114)

James Baldwin (cited in Agnew 2007 p. 5) speaking on the same thread of the perils of nonconformity as hooks (1989) contends: 'That victim who is able to articulate the situation of the victim has ceased to be a victim; he, or she, has become a threat' resonates fittingly to my role as a participant observer in my decade long legal campaign to remove the N-word from a public epitaph.

Moreton-Robinson (2000) talks about the divergence in interpretation of whiteness between black and white women as something quite profound:

> Indigenous women's experiences are grounded in a different history from that which is celebrated and known by those who deploy the subject position middle-class white woman. We know and understand the practical, political and personal effects of being 'Other' through consciousness forged from our experiences and oral traditions (p. 179).

Moreover, Moreton-Robinson (2000) acknowledges whiteness as gender neutral arguing Indigenous men are also 'the bearers of subjugated knowledges; our different ethics, behaviour and values radiate the moral and intellectual hegemony of white domination and oppression' (2000 p. 179-180).

By advancing the dispute to the level of litigation, after my request to remove the sign was declined by the Toowoomba Sports Ground Trust, I raised the ire of white civic leaders to unprecedented heights (Hagan 2006, Austin and Hickey 2007). The unprecedented alliance of black and white leaders united for the sole purpose of marginalising me, the black litigant against a sports board comprising respected local

civic leaders, added to the whiteness intrigue on a whole new level. The ensuing media focus (Nimmo 2006, Hagan 2007) over the extraordinary civil proceedings drew unflattering international attention to the regional city renowned for its conservative roots.

Indigenous leaders who sided with the respondent, because of some bizarre loyal devotion to their white rugby league friends from a bygone era, were viewed by eminent historian Dr Libby Connors as the "'good blacks" versus the nasty "out-of-towner" stirring up trouble' (Hagan 2005 p. 236) and were, in the approach of hooks' (1989 p. 114) whiteness conjecture, 'rewarded for assimilation'.

Lipsitz (1998 p. 3) contends 'aggrieved communities of color have often curried favour with whites in order to make gains at each other's expense':

> The power of whiteness depended not only on white hegemony over separate racialized groups, but also on manipulating racial outsiders to fight against one another, to compete with each other for white approval, and to seek the rewards and privileges of whiteness for themselves at the expense of other racialized populations.

Frankenberg (1993 p. 142) refers to those who chose not to see race as an issue as exhibiting colour-blindness which she describes as 'a mode of thinking about race organized around an effort to not "see" or at any rate not to acknowledge, race differences'. The Indigenous local leaders' support of the Toowoomba Sport Ground Trust in legal proceedings against me was instrumental in the respondent's domestic court successes (Hagan 2005) as they chose not to credit race as a factor into what was clearly a case underpinned on race.

Indigenous leaders who proffered a contrary voice on the issue of race or difference were choosing to be 'selectively engaged and deemphasised' (Wadham cited in Moreton-Robinson 2004) in order to remain in favour with their white sporting associates and to acquire any spin off privileges that may result in that association premised on loyalty. MacDonald (2006 p. 359) saw it as 'many Aboriginal people in

the town of Toowoomba oppose his (my) stance, fearing the backlash (by its white population), or perhaps they are beyond caring'.

I view the word 'nigger' as an unambiguous message of derision delivered by non-white people on 'Others' of colour. The desensitisation of that word by my adversaries only adds to the glaring whiteness that informs their contemporary standpoint on race. There are many Toowoomba residents, including some Indigenous people, who still insist there was nothing derogatory in honouring Edward Stanley Brown by including his nickname 'Nigger' on his public epitaph as it was given in a different era and did not carry any offence because it was part of their history, their heritage (Hagan 2005).

That limited and debatable argument of a different era offering up plausible vindication for users in the maintenance of the N-word back then and for its continuation if used as a nickname in honouring a sporting legend on a public sign today, is flawed. Joseph and Williams (2008 p. 69) argues there are two contradictory phenomena about the word 'nigger': '… there was a "master narrative" about "nigger" and the underlying societal beliefs and norms about the word:

1. *Society says, "Don't say 'nigger'. It's a bad word." and yet*
2. *In its teaching, behaviors, and policies, society calls Black people "niggers".*

It is the interaction and contradiction, Joseph and Williams (2008) contend, of the master narrative and the dominant society reality that they 'believe contributes to societal reality that we believe contributes to society's resonant silence and paralysing fear about confronting issues of race, racism, White privilege, and White supremacy' (p. 69).

Whiteness in Toowoomba – as a consequence of their paralysis of fear about confronting issues of race – effectively unified disparate white people, who characteristically were divided on income and status lines, into a quasi-coalition of homogeneity. From my intimate front row seat perspective it was patently clear that

the predominantly white rural community's best form of attack was to unify as one to demonise me.

Meredith J Green et al. (2007) asserts:

> Whiteness is often represented as homogeneous identity of all white people. This tends to obscure ethnic differences among white people and to induce a false sense of oneness and sameness (p. 404).

In the community's attempt to silence my voice – using unlimited resources available at their disposal from an amalgamation of the broader populace, civic leadership, business entities and the media – they momentarily assumed a collective hubris outlook in the whiteness belief that their dismissal of me as an influential protestor would afford them an ascendancy on the controversy.

The principal motive for the community flexing its aggregate muscle against me was a means by which my high profile sporting, business and political opponents could avoid a public stoush on the contemporary offensiveness of the N-word in the hope that I would back down on threats of proceeding with legal action. On both cases they failed: I was not silenced and the N-word usage as an epitaph on a public sign was debated in all domestic courts as well as the United Nations and from which there was saturation media coverage, to their detriment (Willheim 2003).

Richard Dyer (1997), in addressing the issue of shifting border and internal hierarchies of whiteness argues:

> Because whiteness carries such rewards and privileges, the sense of a border that might be crossed and a hierarchy that might be climbed has produced a dynamic that has enthralled people who have had any chance of participating in it (p. 20).

By conveniently viewing me as the common foe allowed for the amalgam of white people, with the less privileged whites enjoying the thought of being privileged without actually feeling privileged (Rothenberg 2005) but, paradoxically, feeling

comfortably located in that social category on their sole redeeming feature of being white. Johnson (2005 p. 35) argues 'individuals receive privilege only because they are perceived by others as belonging to privileged groups and social categories'.

Conversely, Kowal (2012) argues that in the counter-politics of progressive space, for white supporters of my campaign, where there is inherent dangerousness of whiteness, 'white anti-racists must build an ethical white subjectivity that transcends its stigmatized attributes if the imagined future of Indigenous social justice is ever to eventuate' (pp. 10-11). Strong white supporters of my case such as Dr Libby Connors, Drew Hutton, Peter Black, David Curtis and Ernst Willheim (Hagan 2005), in particular, were acutely aware of the stigmatization of whiteness (Hughey 2012, Kowal 2012) and maintained an ethical objectivity in all their advocacy work in championing my decade long legal campaign in *Hagan v Toowoomba Sports Ground Trust* (Willheim 2003).

However, these strong white vocal supporters were very much in the minority often drowned out in tsunami waves of remonstration by an overwhelming media driven public backlash to my legal campaign. The vocal reaction of the vast majority of Toowoomba's population to my campaign represents to me the angst that resides within. Giroux (1997 p. 287) refers to this angst in his description of whiteness as the 'resentment and confusion of many Whites who feel victimized and bitter, while it masks deep inequalities and exclusionary practices within the current social order'.

Those dissenting white people longed for a return to the social order of the 1960s when the E. S. 'Nigger' Brown Stand sign was erected and when blacks had no real political voice (French 2009). Without doubt my strong public and political advocacy over an obnoxious racist epitaph would not have been countenanced in that era where Aboriginal people were not recognized as citizens in their own country, did not have the right to vote and could summarily be banished without fear of reprisal by the law for far minor transgressions against the white establishment (Elder 2003, Watson 2010).

That era of white supremacy is best summed up by bell hooks (1995 p. 158) who said, 'we are collectively asked to show our solidarity with the white supremacist status

quo by overvaluing whiteness, by seeing blackness solely as a marker of powerlessness and victimization'. The fact that I did not feel inferior in person or thought to the allied powerbase of white civic leadership ensured I would be in constant conflict with them during the campaign and indeed, for the rest of my life.

Perhaps this contentious debate and costly legal consequence may not have occurred if antagonists to my campaign to remove the offending N-word from a public epitaph had taken hooks' advice when she urged 'whites and blacks to "decolonize their minds"' (cited in Barlowe 1998 p. 32). By denying that racism exists white people involved in my public campaign generally, and civic leaders and judicial officers specifically, had inadvertently become engaged with and embroiled in a blatantly racist case. Johnson's (2005 p. 21) contention that 'denying that privilege exists is a serious barrier to change' explains how the N-word case spiralled out of control with little effort on the respondent's part to enter into a negotiated compromise.

I admit that I have exhibited a predisposition to racial bias, at heightened times of xenophobic imposition in words or acts of aggression towards me by a non-Indigenous person or persons. But in the main I am comfortable in my self-identity as a Kullilli man who is the equal of any person from any race who I have cause to come in contact with. Further, that I know I can handle all that confront me in life's daily challenges without the need to play the race card as the answer to my failings and insecurities, if, and when they occur.

I also preface this dissertation by saying that my predisposition to racial bias towards non-Indigenous Australians, on occasions, is shaped by the nurturing process of my family, relatives and associates, combined with my lived experiences of all that I have encountered. That is why I can say with confidence that all white people, including judicial officers, have the same predisposition to racial bias in their daily lives and vocational pathways towards Indigenous Australians as shaped also by the nurturing process of their family, relatives and associates, combined with their lived experiences of all that they have directly or indirectly encountered with First Nations Peoples. The same principal of everyone having a predisposition to racial bias also applies to Indigenous judicial officers – a representation in Australia at present that numbers less than double figures – who bear the scars of ugly racist recollections

from their childhood and throughout their education and professional legal journey. The degree of bigoted thought that is consumed by, and has influence on, judicial officers whilst on the bench is a matter of racist inculcation they readily accepted from others in their journey to attaining their ultimate job.

The principal question to this admission on my part and that of the readers who may feel affronted by it, is: To what extent do inherent racist sentiments affect and inform your daily decision making?

Queensland squatter, C. J. M. Scallon's (cited in Fitzgerald 1982) prophetic words penned in his 1901 essay *Aborigine Hereditary Ingratitude* best sums up ingrained racism that he believed may have existed from both black and white Australians in that era:

> It is therefore a question of speculation whether the Queensland blacks are the lowest type of blacks in the world, or whether the hereditary biased prejudice they have against ourselves is the result of inhumanity to man handed down by their forefathers … which may account for the ingratitude of the present generation (p. 220).

African American author, feminist and social activist bell hooks (1989) best sums up my familial and political investment in the N-word controversy when she refers to the powerful slogan, 'the personal is political,' that is 'often interpreted as meaning that to name one's personal pain in relation to structures of domination was not just a beginning stage in the process of coming to political consciousness, to awareness, but all that was necessary' (p. 32).

By enhancing my profile an inquiring media has inadvertently revealed my personal accomplishments – awards, publications, degrees and so forth – and in doing so could explain why many white people felt noticeably uncomfortable with me when I was out in public. 'Many whites are not comfortable with black economic progress,' argues Green, Sonn et al. (2007 p. 406), 'because it represents loss of white power and loss of the "savage" subject which, under the colonial power relationship, was rendered the property of his/her white masters'. To an older generation of white

Australians whose minds are still fixed in the past – where unchallenged violent retribution to uppity blacks (Elder 2003) was the legal norm – a confident black man like myself speaking assertively to them down the lens of a television camera, into their homes, would not have been well received. My perceived public display of arrogance of self-belief – or retaliatory induced narcissism – is in stark contrast to the well-worn line told by many older white Australians, to their children and grandchildren, that Aborigines are inferior and submissive in nature (Reynolds 2013).

1.7 Identification of the Research Problem

As part of my research I have chosen to undertake an historical and contemporary appraisal of the term 'nigger' as expressed in the Australian vernacular. This term will be examined for its significance as an individual and group identifier in a pejorative context as well as a term of endearment. Additionally it is my expectation that field data, through the adoption of grounded theory in my qualitative research, will verify the degree of maintenance of the word nigger's enunciated prevalence in today's society.

The research topic was selected as a result of my public campaign to have the word 'nigger' removed from the E.S. "Nigger" Brown Stand epitaph located at the apex of a public grand stand at Toowoomba's premier rugby league venue, the Athletic Oval. As a result of the controversy surrounding the public campaign I became curious as to the approach of individuals and community groups in their analysis of the N-word controversy. In particular, I pondered why certain sections of the community sustained a recalcitrant stance even after a judicial finding came down in my favour.

It is my expectation that the findings of this research will provide answers to this mystifying public reaction to the United Nation's judicial decision that flies in the face of the good old Australian contemporary social ethos of 'giving a man a fair go' (Daniel 2012). High profile media personality, Alan Jones (2003), came to the fore attesting whiteness as the dominant weapon of mainstream Australia against the public threat by 'Others' with his xenophobic acclamation of the UN decision being the judgment made most probably by 'freedom loving people from Cuba, the Middle East and the darkest and despotic parts of Africa' (p. 254). It mattered little that Jones'

public outcry was blatantly racist and erroneous in the extreme. What Jones' remonstration confirms to me, however, is that mainstream Australians can be easily coerced by racially inspired mistruths to their benefit. In reality the good old Aussie ethos of 'giving a man a fair go' is indeed a reference to a 'fair go for whites only' and for 'Others' to remain outside their 'white' scheme of things where everything has a place and a relationship affirming whiteness.

1.7.1 Identification of the N-word in today's lexicon

Ronald L. Jackson (1999) remembers succinctly the first time he was called a 'nigger' and was horrified the words came out of a mouth of a 5-year-old, six years his junior, when the child opened the door for him when he was doing his paper delivery run:

> "Mommy, there's a nigger at the door who says he's collecting money for the paper," the 5-year-old White boy screamed as he summoned his mother. When a middle-aged White lady dressed in corporate uniform came to the door with $1.25 to pay me for the paper I'd delivered, she greeted me with a half-hearted smile and a few words of gratitude. As I turned around to continue my collections for the day, I, an 11-year-old Black boy, was crushed. I felt small. This was not the first time I had been confronted by White racism, but it was the first time I'd experienced it from a well-taught "baby" racist (p. 4).

Jackson (1999) remembered resenting the child's mother at the time and concluded that she 'must have been directly responsible for, or had at least condoned, the White supremacist rites-of-passage in which the boy had been immersed' (p. 4).

It is Ronald Jackson's proportioning of blame, in the above case, on the parent – the nurturer of their child who so shocked him by referencing him with the offending word 'nigger' – which is the crux of this dissertation. It is my contention that the same nurturing principle, and the cause and effect of that familial process, can be applied universally to my hypothesis: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia.*

In Australia a high profile Australian Football League (AFL) coach Nathan Buckley said he blames the community for racist comments made by a 13-year-old girl who called Indigenous AFL superstar Adam Goodes an 'ape' during a game between Collingwood and the Sydney Swans in Melbourne on the evening of 24 May 2013. 'This is a mistake that she's made because she's been conditioned around it somewhere, somehow,' Buckley (cited in AAP 2013) said. Julia Surowka, 13, who deeply offended Adam Goodes by calling him an 'ape' with a minute to go in the Indigenous round – and who was ejected from the game by security when Adam Goodes pointed her out – said she was sorry. Miss Surowka, in a hand written letter to Goodes said: 'Dear Adam, it was good to talk to you on the phone. I'm sorry for being racist. I didn't mean any harm and now I'll think twice before I speak. From Julia' (cited in Portelli 2013).

I argue that words like 'ape', 'coon' and 'boong' carry similar messages of derision as 'nigger' from the user towards First Nations People, whether it is a verbal expression, a public sign or written communication. Adam Goodes said he was 'gutted' when the young fan called him an 'ape'. 'It's not her fault, she's 13, she's still so innocent I don't put any blame on her but that's the environment she's grown up in' (cited in Baum and Gleeson 2013).

The day after Adam Goodes was called an 'ape' by Surowka white supremacists attacked an anti-racism website forcing its host, the Human Rights and Equal Opportunity Commission (HREOC), to close down a comments link to its YouTube video "Racism – It Stops With Me", featuring Adam Goodes and other sports stars:

> Of 200 comments that were received between Friday night (when Goodes was racially vilified) and 10 am yesterday (Sunday 26 May) half were so racist – making references to "coons" and "niggers" – that, after attempting to moderate the site, Human Rights Commission staff pulled the plug (Elston 2013).

In the eyes of the white supremacists there is no difference in degrees of offence in the words 'nigger', 'coon', and 'ape'. The words are interchangeable with the desired intent of the perpetrator of causing maximum offence to the person or groups of

people to whom those words are directed.

Collingwood president Eddie McGuire, a high profile media personality with Channel 9, blamed politicians for sending mixed messages to the community over what is and what is not acceptable. 'Politicians set the tone for the type of country that we will get and the voters go along with it. We all have to decide whether we're going to be red neck, hick country, or we are going to be a country that is very much involved in tolerance,' McGuire (cited in Levy 2013) said.

A couple of days after McGuire was praised by politicians and Indigenous leaders for his strong pro-Goodes advocacy in the 'ape' controversy, he inadvertently inflamed the issue by making a King Kong on-air radio gaffe about Adam Goodes that created sensational headlines nationally: 'What a great promo that is, for King Kong,' Darcy (McGuire's co-host) said. McGuire replied: 'Get Adam Goodes down for it, d'you reckon?' (cited in Pierik 2013a).

Harry O'Brien, a black Collingwood player of African and South American heritage attacked his AFL president, Eddie McGuire, for his racial slur against Adam Goodes saying:

> To me Australia is very casual with racism, I would argue that many people in this country would not think what Eddie or the 13 yr old girl said last Friday is 'bad'. In my opinion race relations in this country is systematically a national disgrace and we have a long way to go to reach a more harmonious and empathetic society (cited in Levy 2013).

An about face from being the hero to villain of a prominent media and sporting personality such as Eddie McGuire adds to the debate about the racially intolerant nurturing process of youth by parents, family and their associates that stays with the child throughout his or her teenage years and remains with them into adulthood. McGuire saying, 'I would happily do that (stand down as president of Collingwood) and I'd cop that blemish on my impeccable record in that regard to make the point' (cited in Pierik 2013b) are merely sanctimonious words to appease others in a

remorseful way but means little to the Adam Goodes' of the sporting world who experience racial abuse daily in Australia.

The fortuitous 'ape' gaffe by McGuire may well have been a case in point that he has been successful to date in suppressing his racist outlook in public, but once the metaphorical surface of McGuire's skin was scratched, his repressed racist guise was unveiled. This scenario played out in the media for all to see in Australia is community xenophobia in action with commentary 'Australia is very casual with racism' from Harry O'Brien (cited in Levy 2013) an unexpected, but welcomed source of substantive evidence for this dissertation. The vast majority of Indigenous athletes chose to tolerate racial vilification from fans on game day in fear of a resultant controversy adversely affecting their careers (Hagan 2006). That is why the very public condemnation of his club's president by the usually conservative Harry O'Brien, a champion Collingwood defender, made national headlines and made non-black people take notice of his measured words. Prominent Queensland columnist Terry Sweetman (2015 p. 62), writing for *The Sunday Mail* on 27 December, also spoke of casual racism in Australia being a norm:

> Casual and careless racism was the norm at a time when anyone or anything foreign was viewed with suspicion. Aboriginal people were treated like dirt, and discrimination was the accepted way of life. People (white) hung disrespectful and appalling labels on fellow human beings. They slipped from the lips without a hint of shame.

The subliminal social structures that recognise and offer a place of vantage (McIntosh 1988, Frankenberg 1993, Leonardo 2005) for the bigots of the world to go unchallenged in their public derision of people of colour has been brought to the fore in dramatic fashion after the Adam Goodes 'ape' controversy in this country. Long and Hylton (cited in Hylton 2010 p. 344) contend studies have demonstrated 'that sport is a contested site of racism, resistance and whiteness processes that range from casual racist behaviour by spectators to more institutional racialized processes and formations in governing administrative structures'. What transpires in coming years from planned enactments of new codes of conduct by AFL and other major sporting

codes' administrations in their strategy to combat racist abuse of elite athletes, only time will tell.

Lipsitz's (1998 p. 4) claim that 'Racism has changed over time, taking on different forms and serving different social purposes in each time period' resonates fittingly in Australia where government officials, sporting administrators and business proprietors, like judicial officers, are doing their utmost at representing the prevailing mood of a static racist disposition of their populace. A population, I might add, fixed in the mindset of a 'white Australia' (Murphy 2013) of a bygone era, demonstrating generation after generation a dogmatic propensity to the maintenance of that bigoted status quo.

1.7.2 The origin of the N-Word

Pilgrim (2001) maintain the history of the word nigger is often traced to the Latin word niger, meaning black:

> This word became the noun negro (black person) in English, and simply the color black in Spanish and Portuguese. In Early Modern French niger became negre and, later, negress (black woman) was unmistakably a part of lexical history. One can compare to negre the derogatory nigger and earlier English substitutes such as negar, neegar, neger, and niggor that developed into its lexico-semantic true version in English. It is probable that nigger is a phonetic spelling of the white Southern mispronunciation of Negro.

Branson (cited in Holt 2008 p. 8) makes reference to the journal entry by John Rolfe, the husband of Pocahontas, the Indian princess who was much admired by blacks, in 1620 in Jamestown, Virginia when the 'Puritans accepted "20 Negars" from a Dutch man-o-war vessel as payment for repairs'. Kennedy (cited in Holt 2008 p. 8) acknowledges Rolfe's entry and in subsequent years, attests the 'term Negars became "niggers" and forever derogatory in the lexicon of American speech'.

Easton (cited in Kennedy 2003 pp. 4-5) wrote back in 1837, in *A Treatise on the Intellectual Character and Civil and Political Condition of the Colored People of the United States: and the Prejudice Exercised Towards Them*, that nigger:

> Is an opprobrious term, employed to impose contempt upon [blacks] as an inferior race … The term in itself would be perfectly harmless were it used only to distinguish one class of society from another; but it is not used with that intent … [I]t flows from the fountain of purpose to injure'.

Michael Johnson (2007), founder and president of the Baartman-Biko Environmental Research Institute in the Western Cape of South Africa who calls himself the 'product of a Black Catholic father and a White Jewish mother' talks about the first time he heard the word 'nigger'.

> It was 1955, I was 6 years old, playing with other children in the sandbox in Washington Square in New York City, when my father, holding my younger brother's hand, approached a swing nearby. A white boy of about 7 next to me said in a voice I will never forget, 'Hey what's that nigger doin' with that White kid?' 'That's no nigger,' I shouted. 'That's my father.' I swung my sand pail as hard as I could and hit him square in the head. To this day, a part of me regards that hurtful event as a lifelong initiation. I became just one more 'angry nigger' (p. 2007).

The usage of the word 'nigger' is the subject of heated debates around the globe, especially in recent racial discourse where African American rap singers use it obtrusively in most, if not all, their lyrics. Parks and Jones (2008) argue that the N-word has a different connotation when used intra-racially among Blacks than when directed at Blacks by Whites. They make this contention on the grounds that 'whereas the N-Word is used by Blacks in a more race neutral manner within popular culture, its usage among Whites immersed in Black culture is nil' (p. 1306).

LaGrone (2000) offers a salient point that the word 'nigger' was and still is a commodity for entertainment:

> In 1928, two white men created the radio series Amos ‘n Andy. The two men played the roles of black men with exaggerated and stereotypical dialects, and engaged in antics and situations of the conventional minstrel show. The commodity proved successful, and the show was so popular, it became the longest running program in broadcast history (p.118).

Hilmes (cited in LaGrone 2000) reported the minstrels helped define a ‘true’ or white America. She wrote that ‘the actors in the minstrel show, usually from disparate European immigrant groups, helped forge a new nationality where “whiteness” became a badge of “true Americanism”’:

> The model or ideal American was white, hardworking, industrious, and thrifty. By stereotyping “darkies” or “niggers” as rowdy, stupid, infantile, lazy, dirty, undisciplined, drunken and sexually promiscuous, Blacks could become a metaphor for the “other” or “un-American” (p. 123).

As white America watched in astonishment at the race riots, Malcom X and his advocacy of the Black Power movement which promoted the politicization of African Americans in the 1960s and 1970s (Wardill 2007), ‘nigger’ as an entertainment commodity waned. The surprise beneficiary of using ‘nigger’ as an entertainment value was the very people who were the target of the white man’s derision: African Americans. More specifically, African American rappers and comedians made huge financial gain by taking ownership of the word. This point is made firmly by Violence Tops of the Charts 1995 data (cited in LaGrone 2000) when it revealed the sale of African American rapper Snoop Doggy Dogg’s debut album *Doggystyle*, in which the popular rapper used the ‘nigger’ profanity unsparingly to the commercial realisation of outselling pop icons such as Madonna and Prince in the 1990s:

> Throughout the album, he identified himself and other men in his community as “nigga.” Female “niggas” were identified as “bitches” and “hos.” According to the *Los Angeles Times, Doggystyle* was a commercial blockbuster. It sold 803,000 copies in its first week. Snoops 1994 U.S. sales “outpaced those of such pop icons as Madonna and Prince” (p. 121).

Comedian Richard Pryor, the most controversial of all African American comedians to use the word 'nigger' in literally every sentence he uttered on stage, told *Ebony Magazine* he thinks of his mother or aunty when he thinks about using the offending word in today's setting: 'The only way I can say it to make people try to understand it (the offense) is, would you call your mother a 'nigger'? You have to apply it to yourself, your mother, your aunt' (Ebony 1982 p. 126).

Clearly New Zealand's Mana Party leader Hone Harawira – who said on September 7, 2012, that Prime Minister John Key treats his Maori MPs like 'little house niggers' (Kate 2012 p. 5) after Key said National Party MPs would not attend a hui or water rights being hosted by the Maori King the following week – was not influenced by Pryor's challenging words decades earlier to desist from using that word.

Motley and Craig-Henderson (2007) holds there is no uniform position on the usage of the N-word among Blacks:

> The analysis suggests that there is not universal agreement among Blacks in the Africa Diaspora about the meanings and usage of the term nigger or nigga. Indeed, it appears that culture of origin influences knowledge structures, the affective (i.e. emotion) reactions associated with the term, and contextual contingencies for use (p. 950).

This position is supported by Fogle (2007) who suggests users of the terms nigga, nigger and negro 'perceive a transformation from an opprobrious connotation into a positive reclamation of a cultural identity occurs' (p. 83). By describing the N-word as a thought, Louis Wendell (cited in Parks and Jones 2008 p. 1305) takes the vile word to another dimension:

> A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.

Kenny (2011 p. 1934) says the ‘word “nigger” still lingers in many African Americans’ vocabulary. With some people, the word evokes anger and brings memories of sweaty slaves being sold. While on the other hand, others use it as a term of endearment’.

In line with this dissertation: *That there is a nexus between ambiguous race-based judicial determination and community xenophobia*, Levin and McDevin (cited in Parks and Jones 2008 p. 1305) contend, ‘Crimes motivated by bigotry usually arise not out of the pathological rantings and ravings of a few deviant types in organized hate groups, but out of the very mainstream of society’.

Irrespective of the badge assigned to the N-word or how flowery one wishes to dress it up, the word ‘nigger’ remains the revolting platitude of disdain levelled, for all intents and purposes, at people of colour. There can be no ambiguity to the resolve of the agent delivering the word.

1.7.2.1 The N-word origin in Australia

The repugnant N-word was transported around the world by bigoted captains and crew of those big sailing ships that transported slaves from east Africa (Rockel 2009) to ports in all parts of the globe. Elder (2003 p. 228) avows, ‘In Australia the derogatory terms such as “nigger”, “piccaninny” and “buck” were borrowed directly from the slave trade’. Those racist sailors and their ruling class passengers who were involved in colonising Indigenous people (Blainey 2000), by brutally usurping their sovereignty wherever they strategically set anchor, adopted the word ‘nigger’ and used it as ‘their’ descriptor of choice to demean and devalue people of colour.

In Australia the use of the word ‘nigger’ was expressed in colloquial speech as frequently as any other adjective in describing Indigenous Australians. Fogle (2013 p. 85) contends ‘while “nigger” was gaining popularity as a racial epithet, it was also being concurrently used to describe “lower-rung” inanimate objects, essentially as an adjective’.

Bruce Elder (2003) quotes from the turn of the century of Henry Edward Tilmouth, part-owner of Napperby station, in his acclaimed book *Blood on the Wattle: massacres and maltreatment of Aboriginal Australians since 1788* is self-explanatory:

> On 16 September, one nigger sneaked up near my bed at the well and my nigger ran up and told me the blacks were sneaking up. I walked out about 25 yards and fired one shot. The nigger did not move and I started to walk towards him. The dog also went after him. He ran a little way and I tried to load the rifle but the bullet jammed in the bridge. I took about ten minutes to get the bullet out. I could see the nigger coming up on the other side. I called on him to stop. As soon as I spoke he raised his boomerang to throw it. I had the rifle at my shoulder, I fired at him. The bullet entered his body over the heart. I had no further trouble with the blacks (p. 187).

Henry Reynolds (1987) provides a graphic quote from a north Queensland resident in 1874 that sums up the contempt in which early settlers viewed the First Australians:

> The private persons go out to kill blacks and call it 'snipe shooting'. 'Shooting a snipe' sounds better than 'murdering a man'. But the blacks are never called men and women and children: 'myalls' and 'niggers' and 'gins' and 'piccaninnies' seem further removed from humanity (pp. 49-50).

Once again Reynolds (2001) provides a clear example of the use of the controversial word as used by a politician, with official responsibility for Indigenous people, in Queensland's parliament:

> Archibald Meston 1889: -
> … those who know the nigger best feel most the impossibility of doing much to ameliorate his condition or protract the existence of his race. This callousness as a rule arises from no lack of sympathy with the blacks, but from a firm conviction that their stage of civilization is too many hundred perhaps thousand years behind our own to allow their race to thrive side by side with ours (p. 146).

South Australian Minister for Aboriginal Affairs, The Hon. M.H Armitage, quoted in Hansard on 22 November 1994 (cited in Blair 2003) – in much the same manner as Archibald Meston in Queensland Parliament in 1889, 105 years earlier – said: 'The only nigger in the woodpile at the moment in this whole scenario is that the Federal Minister for Health is apparently attempting to put political obstacles in the way of a process that will make sure that $6 million is saved and better services provided.'

In 1913 an enterprising local in north Queensland attempted to use the offending word as a term of endearment as highlighted by Kidd (1997):

> A Kuranda businessmen lobbied against any removal of local Aborigines, declaring them to be a "wonderful little tribe of niggers … a strictly moral tribe pure blood and on a fair increase" (p. 71).

The question that this dissertation seeks to answer: How did the N-word enter the Australian lexicon soon after the arrival of the British First Fleet at Botany Bay in 1788 and reside permanently as a normalised reference point of racial derision for First Nations People?

Perhaps the obvious answer to the above question is one of power; that white people of influence do not like being told to dispense with the use of pejorative words of their creation that offend 'Others'. Smith (2014) writes of scholars in early 2011 who took offence to changes to the words 'injun' and 'nigger' used in a more reader-friendly edition of Mark Twain's *Adventure of Tom Sawyer* and *Adventures of Huckleberry Finn* bound in one volume:

> Hoping to soothe the sensibilities of readers who historically have been offended by the novel's ubiquitous use of racial epithets, specifically "injun" and "nigger," editors replaced the offensive words with "Indian" and "slave," respectively. The company's decision set off a firestorm of criticism, especially from those in the academy, who criticized the diction change as the worst form of censorship (p. 182).

McIntosh (cited in Moreton-Robinson 2000 p. 59) makes the analogy that, 'White race privilege also conditions it practitioners into being comfortable, confident and oblivious to the way in which they are trained to inflict daily doses of hostility, violence and distress on non-white women'. In making McIntosh's white race privilege comment gender neutral, I am able to juxtapose in this dissertation the thinking of most non-white people who, through traditional nurturing practices, have no sense of right or wrong with a word they have grown up hearing daily and to which they have little empathy for those who might feel aggrieved by its contemporary usage.

Evans, Saunders et al. (1988 p. 102) wrote of deprecating nursery rhyme used against Aborigines that was popularized throughout the 20th Century by children and adults alike.

Oh! it's only a nigger, you know;
It's only a nigger, you know;
A nigger to wallop, a nigger to slave,
To treat with a word and a blow.

It's only a nigger you know;
A nigger, whose feelings are slow;
A nigger to chain up, a nigger to treat
To a kick, and a curse and a blow.

Kennedy (2003 p. 6) in his seminal book *Nigger: The Strange Career of a Troublesome Word* referenced two children's rhymes that I heard white kids in the playground use freely in primary school in my home town of Cunnamulla:

Teacher, teacher, don't whip me!
Whip that nigger behind that tree!
He stole honey and I stole money.
Teacher, teacher, wasn't that funny.

As well as:

Eeny-meeny-miney-mo!
Catch a nigger by the toe!
If he hollers, let him go!
Eeny-meeny-miney-mo!

To demonstrate the ease in which the N-word was accepted as a nursery rhyme in school playgrounds around the nation the little white kids at Cunnamulla State Primary School inventively used 'squeals', instead of 'hollers' in the Eeny-meeny-miney-mo rhyme. We all know that children do not just come up with sayings as offensive as the above rhymes. The source of those vile jokes exist in bigoted minds of parents whose whiteness teachings merely robs their offspring of their exquisite innocence. Through the repetition of youthful racist rhymes – without complaint from others in the playground – the children's new poetic expression rapidly transformed from 'new' to 'normalise'.

In essence the word 'nigger' was always used disparagingly in reference to Aboriginal people, particular the unambiguous use to those Aboriginals challenging the status quo during early settler times when quotes like: 'There was no room for "cheeky niggers" in the world the settlers were making – "cheeky niggers" usually had short and unhappy lives or they rotted slowly in penal institutions' (Johnston 1988 p. 14). Was the reference to rotting 'slowly in penal institutions' a confident boast on the part of a tacit allied position between civic leaders and the judiciary of what happens to 'cheeky niggers' back in that era? This dissertation underpins that position back then and provides proof in the following pages of the nexus between race-based judicial determination and community xenophobia's prevalence today.

History pages are littered with analogous N-word usage in all contexts. A journalist chose an uncomplimentary word to describe the colour of the state of white men who spent many hours working in the Ipswich Coal Mine in 18 June 1970: 'Men naked to the waist, and almost as black as niggers, working away in every conceivable attitude in remote corners' (Johnston 1988 p. 300). The coalmine worker analogy is consistent with celebrated African American author Dick Gregory's (1965 p. 52) experience, when he wrote in his autobiography *Nigger*: 'And then the foreman told another boss

to put me down in the furnace pit. “Nigger can take heat better,” he said’. It is as if there is an expectation that whenever work in extreme heat is a condition of employment, it is work that is best suited to black men, women and children. Not sure where the logic is with that reasoning, other than the obvious racist position. Maybe the history of work for First Nations People in this country in the cotton fields, sugar cane and cattle industry in extreme heat conditions would provide some basis for validation of that presumption by white people (Horton and Australian Institute of Aboriginal and Torres Strait Islander Studies. 1994).

Ernest Willheim (2003), my constitutional barrister in the N-word court cases, made a fitting observation after Prime Minister John Howard’s non-compliance with the United Nations recommendation to remove the offending N-word from the public sign in question: ‘Perhaps “regime change”, if and when it comes, will see a renewed commitment to human rights, a renewed respect for international human rights obligations and a reversal of Australia’s recent retreat into isolationism’ (p. 129).

With a history so shaped by white historians, economists and politicians it was therefore with some trepidation that I undertook this huge research task knowing that the race issue is fraught with memory recall of unpleasant past experiences. Many older Indigenous Australians, the bearers of emotional pain and trauma of history, recoil at the very mention of early race contact while some members of the non-Indigenous population, the perpetrators of unconscionable race practices, wish not to be reminded of their barbaric past or those of their forebears.

Australian historians (Johnston 1988, Reynolds 2001, Elder 2003) and a myriad of prominent authors providing biographical coverage, like Mary Durack (1959), inadvertently yielded raw data for my study confirming the frequency of the word ‘nigger’ usage in daily conversation since white contact in this country to describe Indigenous Australians. How ironic it is today to hear, on occasion, prominent civic leaders expound that the unsavoury N-word was never used in reference to Indigenous Australians (Hagan 2005). It was, they alleged, only used in reference to African Americans.

To further explore the usage of the word ‘nigger’ as part of the Australian lexicon and to affirm the nexus between the way children are nurtured and community xenophobia, I appraise, in Chapter 2, five generations of my family’s upbringing as it correlates to that of other Aboriginal members of our community and that of our white counterparts. Most importantly the detailed analysis of my family’s lived experience, principally used throughout this dissertation as reviewed through my biography *The N Word: One Man’s Stand (Hagan 2005)*, is used to validate my hypothesis.

Chapter 2: Familial experience of the N-word journey

2.1 The disparity of Whiteness

African American novelist James Baldwin (cited in Johnson 2005 p. 17) in putting his case forward that there is no such thing as whiteness or, for that matter, blackness, or more generally, race, argues:

> No one is white before he/she came to America. It took generations, and a vast amount of coercion, before this became a white country.

In his provocative reasoning Baldwin challenged his readers to examine the very nature of the construction of the systems of privilege and oppression (Baldwin 1972, Baldwin 1985), which sociologists call the '"social construction" of reality' (Johnson 2005 p. 18)

Lipsitz (2000) argues there is more to whiteness than just attitude:

> The possessive investment in whiteness is about assets as well as attitudes; it is about property as well as pigment. It does not stem primarily from personal acts of prejudice by individuals but from shared social structures that skew access to resources, opportunities, and life chances along racial lines' (p. 519).

I still have evocative childhood memories of my humble beginnings being raised by displaced Traditional Owner parents, in a fringe camp situated politically and strategically by civic leaders between the sewage treatment works and the town cemetery, in a segregated rural community in south west Queensland in the late 1950s and throughout the 60s. These civic leaders had shared social structures that facilitated racist bylaws to support their privileged vantage point of locating the blacks 'out of sight out of mind' (Brewster 2010 p. 9). Atkinson, Taylor et al. (2009 p. 312) argue 'socio-economic exclusion and political marginalization of Indigenous Australian life continues in large part because it is out of sight of white Australians'.

I am cognizant that I still carry the invisible scars today of the evil disconnect of normalized whiteness (Moreton-Robinson 2000) that immersed Cunnamulla's non-Aboriginal population of that era.

2.2 Fanning the flames of frontier bigotry

Ironically my story, over the racially offensive and repugnant N-word, started, in the context of my surname Hagan, with the union of an attractive charcoal black skin Kullilli woman and her suitor, a besotted ivory-white complexion Irishman. This inimitable love affair of a black woman and white man against the unambiguity of a racist community backdrop speaks volumes of the perverseness of bigotry that has waned little with the passing of two hundred and twenty plus years of shared experience in this country.

My paternal grandfather's name was Albert Joseph Hagan; his father was an Irishman named Joe Hagan. His mother Trella was a full blood Aboriginal woman of the Kullilli tribe (Koch 2008), born where Bulloo Downs Station is now situated, west of Thargomindah. Like her ancestors who lived off the land for hundreds of thousands of years prior to white occupation (Flood 1990, Clark, Cathcart et al. 1993), Trella was a proficient hunter-gatherer as a young girl, having been well nurtured by her mother and aunties on the ways and customs of her people. But as a woman, and with the sudden arrival of the roguishly handsome Irishman Joe Hagan on the scene, her life was about to undergo a profound change that would leave an indelible legacy for her and her descendants to follow. With this unplanned meeting and subsequent affectionate bonding, Trella, and her descendants to follow, became cognizant of racial differences and the power imbalance of that cultural polarity. Alcoff (2015 p. 8) views the growing awareness by Trella from a space devoid of white people pre-contact to an interaction with them for the first time, through forceful imposition, as whiteness that 'is far from ontologically empty: it is a historically emergent lived experience, variegated, changing and changeable'.

How did Joe Hagan come in contact with a Kullilli woman living on her traditional land amongst her people? Over lunch with Joe Hagan's white grandson from his second relationship, John Barton (2014, pers. comm., 2 April) in my hometown of

Toowoomba, I was informed that his mother's father was from County Cork (Lysaght 2009) in Ireland and arrived in Australia on the Ship *Castle* in 1849. John told me Joe Hagan changed his surname from O'Hagan to Hagan when he arrived in Australia. He also added that although he came from County Cork to Australia, his family has roots in County Tyrone where they were noted horsemen.

It was Joe Hagan's arrival in far south-west Queensland, where he was doing the mail run and contracted fencing jobs, from South Australia where he once owned the property Alton Downs (John Barton 2014, pers. comm., 2 April), that brought him in contact with Trella, my great grandmother. His de facto partnership with Trella mixed the Irish Hagan bloodline with the Kullilli Traditional Owner bloodline and in so doing added colour and intrigue to their only child together and their descendants down that singular bloodline.

John shared with me knowledge from his mother of her father, the same Irishman Joe Hagan, and how he had met her Irish mother Blanch Gaden when he was working as mailman in western Queensland. I have no information of the cause of Trella and Joe's separation, except his time with her produced my grandfather, his first child, before his marriage to Gaden to whom he had a further 13 children (Meade 2008).

Clearly Trella and Joe's relationship resulted from an unintentional contact of unforeseen circumstances in a time where such partnerships were rare and when noted, frowned upon by the authorities and mainstream society. What is even more lucid is the fact that Joe Hagan readily agreed to the use of his surname and Christian name as the middle name for the birth of his first child, as read on my grandfather's birth certificate, Albert Joseph Hagan. I shared that bit of information in a throwaway line to a journalist from *The Australian* Kevin Meade when he asked in June 2008 about the origin of the Hagan name during an interview on our native title connection to the Kullilli tribe.

Meade (2008) wrote of the 'the third person in the love triangle was Hagan's legal European wife from southern NSW to whom he had 13 children' and added:

> Mr Hagan said the true story, according to family history, was that Joseph Hagan, who indeed was an Irish mail contractor, met Trella when he was travelling in the Bulloo Downs area. He said the mailman and Trella had a child named Albert Joseph Hagan – Jim's father – who was born at Yalpunda in northern NSW, 14 km from the Queensland border, but still in Kullilli country (p. 7).

Soon after that story broke I received a call from John Barton who was making an enquiry on behalf of his mother Monica on reference to what appeared in print to be her father. John was a television pioneer in current affairs reporting in Australia and at the time of making the call to me he was a director of sport at Asia-Pacific Broadcasting Union based in Kuala Lumpur (Barton 2007) and had the responsibility of running television coverage of the 2008 Beijing Olympics.

In January 2010 *The Australian* chief reporter Tony Koch attended a reunion of the descendants of Joe Hagan, Trella and Blanch in Brisbane and reported:

> When 85-year-old Monica Barton read the reminiscences of Aboriginal academic Stephen Hagan in *The Australian* about his Irish great-grandfather, her jaw dropped. The Joseph Hagan he was describing had the same name as Barton's father, was the same age and hailed from the same town in the Queensland outback, Birdsville, where she had been raised. What's more, Joseph Hagan had operated a pack horse mail-run like her dad's and shared his unfortunate history with the cattle station Alton Downs, which he lost in the teeth of a drought (Koch 2010).

Koch (2010) wrote of the uncovering of 'an extraordinary story of shared heritage between the two sides of the family, previously unknown to each other. But one difference stood out: Stephen Hagan's people are proudly Aboriginal and dark-skinned; Mrs Barton's are descended from pearly Celtic stock'. Koch continued:

> The key to the mystery turned out to be a tribal Aboriginal woman named Trella, who was Joseph Hagan's young lover all those years ago. In 1895, Trella bore him a son, Albert: Professor (sic) Hagan's paternal grandfather.

On reflection of that significant reunion of the black and white families of Joe Hagan in Brisbane back in 2010 I find it extraordinary a 'dark secret' – a direct bloodline – can be so utterly suppressed by Joe from his white wife and family of thirteen children. No one knew. I believe my family's story, as exceptional as it may read, is unremarkable in the history of this country. It would prove interesting reading should all 'dark secrets' be revealed to fill in the missing pages of white settlement in this country and to usher in a correction of the moral and legal implications of the incalculability of such exposés.

I am not sure if Joe Hagan was aware when he first met Trella that she was living on her traditional lands, on her people's sovereign territory, and not in Queensland as read on his map. Rivers, mountain ranges and other topographic markers are still used as visible boundaries for Traditional Owner groups around the nation today – as they were for time immemorial – but that all changed when the white man's fence and rock markers took over as the official boundaries of private, public and state borders (Horton and Australian Institute of Aboriginal and Torres Strait Islander Studies. 1994).

A week after Captain Arthur Phillip set foot on sovereign soil of the Traditional Owners of Sydney, the Eora people (Zeppel 1999), 'he planted the flag at Sydney Cove to claim the land for King Georg III' (Ian 2013) oblivious to the fact Aboriginal people 'probably numbered about 300,000' divided 'into 500 tribes, each with its own territory, language and customs' (Franklin 1976) were here for eons before his claim of discovery.

Aboriginal leader Lois 'Lowitja' O'Donoghue (1991) on offering an Indigenous perspective on population density of the First Australians, pre and post contact with white settlement, contends:

> In 1788, when White Australia was founded, Aboriginal people – my people – were a vigorous nation perhaps 1 million strong. By 1901 we were largely dispossessed and a demoralised remnant, locked away on reserves, under control of the government, and, as a 'dying race' of no real account (p. 17).

Mahroot, one of the last survivors of the Botany Bay tribe vividly recalled the devastating impact of Arthur Phillip and his 'First Fleeters' who 'decimated his tribe of four hundred when they arrived in 1788 to four by 1845 through the introduction of alcohol, disease and random killings' (cited in Elder 2003 p. 1-2).

It was from this backdrop of mistrust of strange white intruders that Trella's ancestors first heard of through traditional modes of communication (Rigby, Rosen et al. 2011) and then witnessed firsthand the calamitous impact of uninvited impositions to their Kullilli lands that she was to confront in the latter part of the 19th Century.

Joseph Hagan was not the slightest bit concerned about the traditional or white man's boundaries or what other white folk he lived amongst in far south west Queensland thought of his black female company back then, as he was besotted with Trella and the affection from her in turn was reciprocal.

The government at that time, however, frowned on mixed relationships. They considered marriage between white men and blacks as 'degrading to the man, although in nearly all cases the man is of a very low type' (Roberts 1978 p. 29). The mongrel children of a mixed relationship were deemed by officials to have little hope of reaching adulthood. It was their belief that in all probability the half-castes would degenerate and become extinct (Roberts 1978). Social Darwinism influenced the thinking of leaders in Australia in that era as it did with leaders all over the world. 'Aboriginal people, it was believed, were doomed to die as an inevitable part of the human process of evolution,' (Clark 2000):

> Such beliefs may have also justified and supported the covering up of the many massacres of Aboriginal people that occurred throughout Australia subsequent to white colonisation (p. 150).

I am testimony, as the third generation of a black and white union, to the fact that the mongrel mixtures did not degenerate and become extinct. However there were many instances where Aboriginal women were deplorably mistreated and were not afforded the respect of white men such as Joe Hagan:

> On the cattle stations, 'the Aboriginal woman is usually at the mercy of anybody', from among the white staff and 'locked up at night to keep the women from their own people'. In 1900, a station owned by the Queensland National Bank had 'eight or nine gins fenced in with rabbit-proof netting next to the house'. One man 'sent a gin away with the mailman to Burketown to be sent south to some of his friends as a slave. Parties of men used to go out to capture gins'.
>
> These women were traded between stations. The government report in 1900 states that women were handed around from station to station until discarded to rot away with venereal disease. The Aborigines fiercely resisted this slave trade. A magistrate reported: 'Every murder that occurred on the coast was due to the carrying off of gins' and a select committee was told 'in the matter of kidnapping gins, you cannot control white men … and it is the cause of half the murders committed by the blacks upon them' (Roberts 1978 p. 29).

I know from speaking to family members that Trella was spared the indignity of being a victim of this heinous people smuggling that occurred in Queensland by sadistic men around the time her son Albert was born in 1895. The thought of such barbaric acts perpetrated on Aboriginal women in that era is repulsive in the extreme. However, in the context of this dissertation's research on community xenophobia, the frequency and savagery of sexual exploitation of Aboriginal women is elucidating in its unpardonable commonality.

The prevailing attitude of white people of that era, or at least from the vast majority of white men, was that any female of non-European stock was less than human (Elder 2003) and fair game in a relatively new British colony with a conspicuously obvious white women deficit and in which 'whiteness was valued above any other quality in settlers' (Claremont 2004 p. 226). Marcia Langton (2011 p. 7) argued the 'Australian frontier was a notably masculine one, and miscegenation with Aboriginal women was common'.

Moreton-Robinson (1998), whose words in a contemporary setting give credence for its prophetic reflection of early contact years, contends 'Australia has a history of preferring and privileging those people who have White skin' and do not value Indigenous people:

> Indigenous people are conscious of how White skin privilege works because we have lived within the constraints of Whiteness. Living with Whiteness means being treated as less than white; not entitled to an equal share in Australian society and consciously knowing that White culture does not respect, value or view as legitimate our knowledges and rights (p. 12).

Trella, my great grandmother, would have been well versed by her mother and aunties of her standing in the white societal pecking order – a motley collection of bush hardened local residents and desperate transients seeking a change of fortune – of being at the bottom rung of the social ladder. Eminent Aboriginal leader, Lois 'Lowitja' O'Donoghue (1991 p. 19) asserts 'Aboriginal people were considered to occupy the lower rungs of the human evolutionary ladder, which, last century and earlier this century, justified the destruction of much Aboriginal culture in the inevitable march of "civilisation"'.

For all I know she, like her mother and father before her, may not have ventured more than a couple of hundred kilometres in any direction from their birthplace in their entire life, as a clan within a tribe, prior to white occupation. There was travel to other parts of the Kullilli nation, some hundreds of kilometres from the southern parts of the Bulagri swamp lands south of Bulloo Downs Station homestead into northern New South Wales to the eastern boundaries of Mt Margaret Station in the far north of their traditional lands, for intra-tribal ceremonies as well as to important cultural exchanges with neighbouring tribes (McKellar 1984).

What I do know is that my grandfather Albert Hagan was born at Yalpunga Tank on the 25th July 1895 (Hagan 2005). Yalpunga Tank was a remote community situated in northern New South Wales within close proximity of the Queensland border near Wompah Gate.

Albert's mother lived on her traditional land and knew her boundaries. Her mother and grandmother before her shared their infinite knowledge to Trella and all the young girls of the Kullilli tribe on how to live with and be sustained by the land and all that was around them. Trella, like all members of First Nations peoples throughout the country, was grounded in the interrelationships between people, resource species, land, and spiritual domains (Holmes and Jampijinpa 2013).

Albert Hagan was born at a time when the white population treated domestic animals and stock better than Aboriginal people. His mother, concerned for his wellbeing and aware of the conditions her people had to endure, would have wished for Albert nothing more than good health and a safe passage through life. In 1889, just six years before Albert was born E.C. Putt, an agricultural settler in Atherton north Queensland complained he was not getting enough support from the government: 'I have shot 13 or 14 niggers in this district and this is all the Government has done for me. I can't get a bloody nigger when I want one. They all go to the Chinamen' (cited in May 1994 p. 83).

I doubt E.C. Putt had any notion the N-word term he used was a discrete reference to African Americans, as suggested to me by critics in my litigation to remove the same word from a public stand in Toowoomba a century later; if in fact he even knew where America was back in that era. So clearly the perpetrators of the N-word, a polemic appellation transported to Australia by racist crews who navigated their tall ships across the Atlantic and Pacific oceans to Australia (Elder 2003), used it calculatedly at people of colour with vile intent.

A correspondent in the *North West Times* wrote in 1894 that whips used for flogging only 'wiped the dust off a native'. 'Flogging is all very well in its way', he observed, 'but a nigger can take a power of it to convince him' (cited in Reynolds 1987 p. 71). I am cognizant of the era of this newspaper's publication, 1894, twelve months before my grandfather Albert was born, and fear for the palpable loathing he and his people were held by pastoralists immersed in whiteness at that time in our shared history.

The colonists demonstrated an uncaring attitude towards the First Australians when it came to addressing their own gratification and employed the most barbaric tactics in dealing with those who posed a threat to their property. Albert Hagan was safe as long as he did not attempt to steal supplies from the pastoralist's hut or venture too close to their homestead. Elder (2003) provides a shearer's graphic account of early settlement around Dubbo to highlight the inherent dangers that could befall those who ventured too close to the supply hut:

> One of the most ingenious and sadistic products of the blacksmith's craft was the mantrap, which some graziers set outside the supply hut to catch any Aboriginal person who attempted to steal flour, tea or other foodstuffs. The trap, which was designed like a huge rabbit trap, was so carefully constructed that it needed the full weight of a grown man to hold the jaws open and the spring was so strong that when the jaws snapped shut no single individual could prise them apart.
>
> The graziers became so confident of the efficiency of the mantrap that the sound of the jaws snapping shut upon an Aboriginal leg rarely caused the grazier to get out of bed. In the morning he would rise, go outside, and club the thief to death. Station hands would be expected to dispose of the body (p. 225).

Albert was also out of harm's way as long as he did not attempt to raid cornfields when in need of a feed. L.E. Threlkeld (cited in Elder 2003) recounted a story of an Aboriginal person who was shot while attempting to steal some corn:

> The farmer, in an attempt to dissuade other Aboriginal people from theft, hung the body from a branch of a nearby tree with a corncob stuck in the lifeless mouth. It was a case of using a human as a scarecrow (p. 242).

Renowned Aboriginal academic Professor Gracelyn Smallwood (2011 p. 225) succinctly defined colonialism as 'a structure of exploitation and domination and like all such structures, it rests necessarily on a fundamental layer of "dirty business"'. With the conduct of 'dirty business' morphing in the new British colony as a norm – the way things were done in taking care of the natives – it was not long before people

in positions of responsibility who had empathy for the First Australians spoke out and demanded change.

Fitzgerald (1982) identified the role W.E. Parry-Okeden, the Queensland Police Commissioner, played in creating a safer place for Aborigines in his state. W.E. Parry-Okeden, after witnessing the ravages of race war, submitted a report in 1897 recommending the abolition of the Native Police. His belated plea for 'a better order of things' was largely due to Archibald Meston, whose authoritative report presented in 1896, highlighted the injustice of dispossession by employing legal and statistical arguments. He wrote tellingly:

> It seems well to consider our debtor account with the aboriginals. Queensland has so far alienated about 10,000,000 acres of freehold land, and leasehold about 300,000,000 for pastoral occupation. For this we have received about six and a quarter million in cash, and for the leasehold land we receive 332,800 pounds annual rent. Since the year of separation, 1859, or even since 1842, we have not expended 50,000 pounds for the benefit of the aboriginals, and have never since then or before, paid them a single shilling in cash, clothes or food, or even an acre of land (p. 217).

Meston's recommendations were in part incorporated into the 'Queensland government's *Aboriginal Protection and Restriction of the Sale of Opium Act* (assented to on 15 December 1897), which established six large, self-sufficient, closed reserves and ten small ones' (cited in Fitzgerald 1982 p. 217).

Police protectors strictly enforced segregation under the act that was 'intended to protect Aborigines from the violence of settler populations through their removal to missions and reserves, as well as to restrict Aboriginal access to opium and alcohol' (Smith 2008 p. 203). The superintendent decided who was or who was not an Aboriginal, supervised the movements, wages, and property of those on the reserve, and even granted, or refused, permission to marry (Huggins and Huggins 1994, May 1994).

The policy of protecting Queensland Aborigines by isolating them on reserves was, according to Fitzgerald (1982):

> A method of exclusion as much as of protection; if open violence was no longer acceptable covert violence was. Venereal disease, malnutrition, alcoholism, and opium addiction became as much of a danger to Aboriginal life as bullets and cyanide previously had been (p. 219).

Former Cherbourg Mission resident, respected Elder and author Albert Holt (2001), was not impressed with the protection the Act was intended to offer him and other displaced Traditional Owners who were forcefully moved off their lands:

> We were placed in a unique position: being protected meant that we were to be kept safe, our rights defended. But having lived that history, the effect was quite the reverse (p. 16).

My great-grandmother Trella and her people avoided direct conflict with settlers and went about their lives as low key and non-threatening as possible. When Albert Hagan was just two years of age W.E. Parry-Okeden, wrote in 1897 of the plight of Aboriginal women that highlights Trella's vulnerability in the absence of Joseph Hagan who was an itinerant mailman/stockman at that time:

> On outback stations were to be found some of the blackest scoundrels alive – wretches who have wrought deeds of appalling wickedness and cruelty, who thought it equal good fun to shoot a nigger at sight or to ravish a gin (cited in Reynolds 1987 p. 74)

Her survival skills allowed her to maintain a semi-nomadic lifestyle on the edge of town. In a forever changing and exacting environment Trella prepared the best way she could for her son Albert's entry into a formidable world that offered no safeguards against the perils of whiteness and the savagery of behaviour it condoned in Christian men. Hogg (2012 p. 4) affirm the frontier 'encompassed or allowed for seemingly contradictory behaviours, structures and attitudes: Christian piety and the potential for violence; heterosexuality and possibility of homoeroticism; family man

and adventurer'. Benevolence was not a word that filtered down through the generation to me to describe the interpersonal relationship between Traditional Owners and invaders on the land of the Kullilli Peoples in the late 1800s and early 1900s.

2.3 The consequence of displacement

My grandfather Albert attended the Yalpunga State School, on the New South Wales side of the border with Queensland, for a period of four years and then at the age of 12 started work on Bulloo Downs Station. As a young man Albert Hagan was a resourceful, determined and adventurous young man who was now in receipt of wages, although still quite meagre and less than his white counterparts, thanks to the *Aboriginal Protection and Restriction of the Sale of Opium Act* that came into effect in Queensland in December 1897 (Fitzgerald 1982).

A positive outcome from the *Aboriginal Protection and Restriction of the Sale of Opium Act* was that Aboriginal workers were provided with a wage. The down side of the new Act, Smith (2008 p. 200) argues, was that 'the state's relationship with Aborigines now extends beyond forceful interventions into local social organization and the limitation of the capacity for self-determination'. The politicians of course had an ulterior motive by legislating for the protection of Aborigines in that they wanted to control every aspect of their employment and movement.

The most vexatious part of the Act for pastoralists, as told by de Plevitz (1998) was that labour now had to be paid for.

> For over thirty years Aboriginal labour had been got for the price of a few provisions. Now pastoralists were obliged to pay the worker a portion of the set wage as pocket-money. The rest of the wage was to be paid to the protector and to government accounts (p. 148).

The white stockmen earned considerably more than the Aboriginal stockmen for doing the same work and in some cases work of a substandard level in the cattle industry. Most white stockmen were totally dependent on Aboriginal stockmen and

history records the significant contribution made by them in the northern parts of the nation (Wharton 1994, Birch 2003). Elder (2003 p. 227) maintains the treatment of the 'new Aboriginal workforce varied from benign paternalism to shameless exploitation'.

May (1994) states that when the Australian Workers Union (AWU) formed in 1894, theoretically Aboriginal people were given the right to join but they had some difficulty with the wording of their constitution:

> The union shall be open to all bona fide wage-earners male or female, except Chinese, Japanese, Kanakas, Afghan and other coloured aliens. This shall not apply to Aborigines, Maori, American Negros, or to children of mixed marriages born in Australia (p. 81).

Molande (2008 p. 182) contends, 'Whiteness is a position in the human imagination more than the race itself with which it is associated. It is an imagined space carrying the highest possible concentration of values associated with the White race'. If whites, as individuals or as an organisation chose to exclude non-whites from their lives and businesses then that is exactly what they did.

The thought of Aborigines having any rights horrified pastoralists who believed their enforced rights would erode their authority and place a heavy burden on their profit margins. Rosanne Barrett (2013 p. 8) writing for *The Australian* exposed Cabinet Papers of the Bjelke-Petersen government in Queensland in the early 1980s that identified they were against paying equal wages for its Aboriginal workforce as it 'increased their wage bill by 50 per cent'. They instead found the 'offset for the increased wages cost through job cuts, increased service charges and subsidies through the Aboriginal Welfare Fund – the fund established from a percentage of Aboriginal workers' wages' (p. 8).

The palpable institutional racism on display in my home state of Queensland demonstrates the endemic generational racism that has permeated our society through to the highest levels of government, especially as it relates to First Nations People. From the introduction of wages for Aboriginal workers in the 1890s to the expressed

dissatisfaction to pay award wages by the Premier of Queensland in the 1980s, almost a century later, speaks volumes on how white political leaders and pastoralists valued hard working First Nations People.

May (1994) reported that in his 1913 report Chief Protector Bleakley expressed concern that union organisers were trying to interfere with the operations of his department. He expressed concern that some Labour union agents caused some trouble by persuading Aborigines in service to enrol themselves as members of the union, leading them to believe that such membership exempted them from working under the agreement and having their wages paid through the protector. The member for Warrego – the electorate that includes the township of Cunnamulla – John Coyne considered the Chief Protector's accusation had a sinister tone to them. He argued that 'no union agent tried to take a nigger down' (cited in May 1994 p. 83).

John Coyne, Member for Warrego, was not referring to African American constituents within his electorate back in the early 1900s when he said 'no union agent tried to take a nigger down', and that left only one group of black people, Aborigines, as the source of his racist torrent of abuse. I am also sure Vincent Lesina was not thinking of African American constituents when he told Parliament in 1901, 'The law of evolution says that the nigger shall disappear in the onward march of the white man' (cited in Evans, Saunders et al. 1988 p. 82).

Whilst the small victory of gaining wages for workers was being exulted, the Aboriginal stockmen were still not permitted to eat at the homestead with white stockmen and were forbidden to perform their dances, or sing or speak their language. Ignorant pastoralists resorted to punishing Aboriginal men with a stock whip when they caught them performing their so-called pagan rituals (Elder 2003). These acts of wanton cruelty only strengthened their resolve to maintain their culture. They instead devised plans to speak their languages and perform their dances late of an evening out of sight from their vigilant landlords and intolerant, yet prying, white stockmen.

Despite all the obstacles placed in his way, a young Albert Hagan found time to teach himself to read and write as he carried out the onerous work on the cattle and sheep stations where and whenever he had cause to change jobs. He had no problem gaining

respect from his difficult bosses and even managed to advance himself by gaining extra responsibility and a slight increase in pay.

On the 22nd March 1920, Albert applied for, and received from the Chief Protector of Aboriginals, a Certificate of Exemption from the Provisions of the *Aboriginals Protection and Restrictions of the Sale of Opium Acts* of 1897 to 1901 that states:

> The applicant is a steady and hard-working fellow, can read and write well and capable of managing his own affairs, and is treated like a white on the stations in the Toompine District (cited in Hagan 2005 p. 19).

Exemption meant he could work, collect his wages and be responsible for his income. Albert's hard-earned money would no longer be managed by white bureaucrats to invest or squander on their pet projects with no accountability to him (Barrett 2013).

Albert's independence also made it easier for him to move around the bush and it was during this time that he made a decision to settle down and share his life with a young Traditional Owner from a neighbouring tribe. It appears the birds whistling in the trees were not the only beautiful things that attracted his attention. While working in the Quilpie area Albert met Sarah Smith, a Mardigan woman from the South Comingin area, and from their relationship they had two boys: Alf, who married Janette Knight and Fred who married Nellie Lucas. Dad told me it was traditional in those days to marry outside your tribe and in most cases it was to a woman from a neighbouring tribe. Mardigan people's tribal land borders that of the Kullilli to the east and in times of drought they had a mutual arrangement to share parts of the land and its resources: water, flora and fauna.

Dad told me Sarah had a son by the name of Bobby Bismark before his father formalised their friendship. As was the case back then your stepbrother, cousin or an associate through marriage assumed the role of brother. All rights and privileges of a full brother are bestowed on that person. The same bestowals are made to sisters, aunts, uncles and grandparents. This association can be very confusing for non-Aboriginals but within the Aboriginal community it can range from an affectionate term to one of reciprocal obligations.

Following the death of Sarah Smith, Albert met my father's mother Jessie Lewis and together they had four children, May, Albert, Doris (dec. 22.12.48) and James (my father). My father's mother Jessie Lewis, like Albert's first wife, was also of the Mardigan tribe. She often told my father that she was from the Beechal Creek, Humeburn, Mt Alfred area that formed part of the eastern boundary of the Mardigan traditional land. Jessie had three brothers and Dad explained that he was not sure if they were her full brothers. However under strict traditional law she never spoke with them or made eye contact. If she was in a group and any one of her brothers were approaching the gathering she was at she would immediately withdraw from the vicinity. Their names were Jim Smith, Fred Collins and Tommy Napoleon. Dad always called the men uncle and vaguely remembers his mother's sister who he referred to as Aunty Lizy Anrickie.

Although my grandparents lived and worked in the Quilpie area and Dad's brothers and sisters were born in Quilpie, he was born in Bourke in the far west of northern New South Wales on the 21st April 1932. Dad believed he was born in Bourke during one of his parent's long trips south to keep his siblings out of harm's way from government officials who were on the lookout for half-caste kids (Feather, Woodyatt et al. 2012). The government of the day had a policy of removing offspring of white fathers believing they could assimilate better than their full blood traditional brothers and sister into the broader community. The government also had a strange notion that full blood people would eventually die out and become extinct while the half-castes would marry white partners and their colour would be lost in later generations (Evans, Saunders et al. 1988 p. 82). Strange how that theory did not quite work out as predicted.

Another fear, this time from the white ladies of the homesteads, was one of jealousy of their husband's lust for Aboriginal women. Respected Aboriginal Elder from the Kimberley, Reginald Birch (2003 pp. 172-173) spoke frankly of his views on this topic, from his book *Wyndham Yella Fella*:

> I can imagine she made a promise to herself diligently to watch her husband, the manager, and secretly observe his body language and attitudes, especially

> when blacks were working around the place. 'You really couldn't trust some of these young gins,' she must have thought to herself. The missus probably hoped too that she herself didn't get sick, otherwise she would have to go south for treatment. It would be better to go on holidays together with her husband. She had left him home alone on the station last wet. Already there could be the possibility of a little yellow bastard that looks like him hanging around the station and the black's camp. What would the family in Queensland think if that happened?

Back in Trella's country word would filter about the government people's imminent arrival, between Aboriginal camps through the outback, and parents with half-caste children would pack up their family and limited possessions at short notice and walk or drive their wagonettes in the opposite direction to that which the officials were roaming. Ballantyne, Packer and Bond (2012 p. 155-6) identified two principal Acts that made it possible for half-caste children to be removed legally from their parents:

> The *Industrial and Reformatory Schools Act* of 1865 allowed Indigenous children to be removed from their parents and sent to industrial or reformatory schools on the grounds of "neglect". This was followed by the *Aboriginal Protection and Restriction of the Sale of Opium Act* of 1897, which allowed government officials to remove Indigenous people to reserves and to separate children from their families without a court hearing. These acts focused primarily on the removal of "half-castes" – children born of Aboriginal mothers and European fathers.

The term 'neglect' was a loose word as Kidd (2000 p. 8) contends: 'In Queensland from 1865, pursuant to various statutes, a child with an Indigenous mother was defined as legally neglected and could be removed without due process or rights of appeal'. Clearly public opinion influenced both government policy, as it still does today, and more importantly, in the context of this dissertation, influenced judicial determination (Weatherburn 2014).

Adding to the disturbing nature of syndicated abuse of Aboriginal women and children, Probyn-Rapsey (2009) asserts the onus of paternity of half-caste children

was placed in the hands of white men and not the Aboriginal birth mother, such was the palpable normativity of whiteness of that era.

> This view made individual differentiation (or responsibility and 'liability') difficult to determine, especially when coupled with the stipulation that discounted the mother's views in advance: 'no man shall be taken to be the father of any such child upon the oath of the mother only'. It was up to white men to ascertain and enforce white paternal responsibilities, which placed Aboriginal women and children in extremely vulnerable positions (p. 95).

If a white father claims the child, and wishes to care for the mother and child, in all probability the child will be safe from forced removal by uncaring government officials. If circumstances change and the father dies, or chose to abandon the mother and child, then the child will be deemed neglected and is at greater risk of being removed from their birth mother.

The convenient term of 'neglect' resonates today as much as it did back in that era with judges. Bungey (2014) writes that almost one in every 10 Aboriginal children in NSW are in state care.

> Aboriginal children across Australia are removed from their parents in hugely disproportionate numbers. In NSW, it's epidemic: a record-setting 6200 – almost one in 10 – Aboriginal children are currently in out-of-home care. NSW has 18,000 children in care, far more than any other state. More than one-third of these children come from Aboriginal families, though they account for just 4 per cent of the child and young adult population.

The whiteness convenience of deeming all Aboriginal parents as negligent in the eyes of the law, irrespective of their exemplary child rearing practices, to protect the sensibilities of their white paternal forebears, back in that era, is breathtaking in its xenophobic presumption.

Albert Hagan was thinking only of his children when he made the politically dangerous and geographically hazardous trek several hundred kilometres south across

the Queensland border to Bourke in New South Wales to keep his children out of harm's way from unscrupulous government officials in search of half-caste children deemed neglected. Jessie was heavily pregnant when they made the journey south and gave birth to my father Jim, during this forced trip.

Albert became familiar with the country around Bourke from one of his many trips of droving cattle from Queensland into New South Wales. He met Aboriginal stockmen from the area and forged a friendship with them over the years (Hagan 2005). He believed the officials would not follow him over a State border in search for his children.

After living in several western communities over many years Albert decided he had to cease his nomadic lifestyle and to set up camp on a permanent basis near a large regional centre. He wanted his children to have access to education opportunities that Jessie and he were not equipped to provide. Albert was clearly aware of the decline of the rural sector and knew that if his children were to get a fair chance to be providers to their respective families and communities later in life they would need to gain a formal western education. He also knew that it was impossible to return to his mother's land as a result of pastoralists who expropriated her traditional lands, without compensation, and instead settled for Cunnamulla (McKellar 1984): a small community 800 kilometres south west of the capital Brisbane but only 200 kilometres east from the land of his Kullilli ancestors.

The township of Cunnamulla, built strategically along the meandering scenic shoreline of the Warrego River on the land of the Kunja people (Wharton 1996), was to be home for the Hagan family and a town many other Kullilli displaced people also called home around the same time.

2.4 Cunnamulla

Cunnamulla was typical of many rural towns emerging throughout the country in the mid-1800s with the opening up of inland Australia to support the burgeoning pastoral industry. The fact that the land was stained with the blood of Traditional Owners from unsuccessful battles against invading forces mattered little. In recording the history

through the lens of whiteness, of rural towns like Cunnamulla, the history books failed to acknowledge the original owners and the subsequent wars fought to acquire vast tracts of their pristine land, but instead heaped praise on the brave white settlers who dared to go where no white man had gone before:

> The white man first settled the Cunnamulla District more than a century ago but it wasn't until the visit by the explorer, William Landsborough in 1862 that development really got under way. Cobb and Co began to run their coaches into the district in 1867 and in the same year, a petition was presented to Parliament seeking the establishment of a town reserve. A system of public education reached Cunnamulla in 1877 and two years later a local government authority was established, one of the first such authorities in the State (Cunnamulla 2004).

From Dad's knowledge as a child there appeared to be very little evidence of large numbers of local Kunja people living in Cunnamulla when he arrived from Bourke with his family. He said most Aboriginals at that time came from other displaced lands. Dad's recollection of his family commenced when they were living on the banks of the Warrego River about two kilometres upstream from the township of Cunnamulla. There were two camps: the one situated on the eastern side of the river where families from the Nebine River area lived; and those on the western side whose descendants hailed from the tribes of Bulloo and Paroo Rivers.

Families on the eastern side had access to town water from a centrally located tap. Members of that community collected water in buckets for washing and household consumption. The families on the western side had to use the dirty river water that was available during the good season. During the dry seasons, when the Warrego River was parched, a well was dug in the riverbed and filled with water, caused by seepage from the river sand and when properly managed provided the camp with sufficient water. The river water was boiled over a campfire in large drums to kill harmful bacteria before consumption.

After a menacing flood destroyed Dad's camp he moved with his family and others to a fringe camp on the south side of the town. On this new location, affectionately

referred to as the Yumba, Dad's new dwelling was a construction of kerosene tins and scraps of iron sheeting gathered from the rubbish tip and fastened with wire onto a bush timber frame. A Hessian bag was used for a doorway and a bough shed was fashioned out of bushes from gum trees tied with wire onto a timber frame for shade. There was no water drainage or bitumen road to Dad's fringe camp from town and he described to me the conditions his people had to endure as being sub-standard and atrocious.

Prior to the installation of town water to the Yumba Dad told me the dead in Cunnamulla were cared for better than the Aborigines. At the cemetery, which borders the Yumba, grieving white locals would fill their buckets from one of several taps to water the grassed grave plots of their dearly departed. A second trip to the tap would be necessary to fill their decorative vases that contained freshly picked flowers to adorn the sites. The southern camp Aborigines, without a single tap between them, took advantage of the short walk to the cemetery, when the resident caretaker was not on guard or had gone shopping in town, and filled their kerosene tin containers full of water for household use.

At around the same time three hundred kilometres west of the Yumba the Kullilli people were experiencing difficulty of their own with the implementation of Queensland's draconian racist policy of forceful relocation of Traditional Owners from pastoral leases (Johnston 1988). In the early 1940s a large group of women, children and old people were removed from Nockatunga Station. Two cattle trucks were sent out from Cunnamulla to round everyone up to transport them 300 kilometres back to the goods train at Cunnamulla (McKellar 1984 p. 59).

Around the same period as the forceful relocation of Kullilli people from Nockatunga Station, Queensland politician, G. Davies (cited in Johnston 1988) made the unambiguous 'nigger' reference in his speech to parliament in 1946:

> I do not say that he should be placed on the same level as the white man and I do not for a moment think there are many in this Chamber who believe that that should be so. I do not admit for a minute that the nigger is as good as I am.

> We know what gigantic problems face America with the Negroes today. Fortunately for this country the numbers of our natives are small (p. 109).

Hazel McKellar (1984), a highly respected Kooma Elder from the Yumba, said she remembers clearly the day the Kullilli displaced people passed through Cunnamulla.

> I was at school at the time and I remember coming home in the afternoon and being told a big load of murries had been through town. One old lady called Molly was left at the Cunnmulla hospital because she was sick from gastroenteritis. She was later sent on to the Mission (p. 61).

The removal of Kullilli people from Nockatunga Station to church run missions was part of the protectionism approach adopted by the Labor government of the day: ostensibly for their own benefit and safety (Johnston 1988). 'Relocation policy,' Zupp (2001 p. 14) argues 'was seen as a way of diminishing the so-called "half-caste threat": the fear of the believed effects of miscegenation'. Despondently physical violence was part of life on those dreaded missions. Aboriginal children throughout the nation were also subjected to daily denigration from teachers unreservedly immersed in whiteness:

> During my first lessons from these men I learnt that as I was black, or partly coloured, there was no place in Australia for me. I learnt that anyone of my colour would always be an outcast and different from a white person. It gave me the firm idea that an Aboriginal, even if he was only slightly coloured, was mentally and physically inferior to all others (Barker cited in Broome and Broome 2010 p. 98).

My family has a similar story of incarceration to that of most First Australians. In our case it was the unpardonable decision to remove a relative on a presumption of a health diagnosis that allegedly made him a danger to others in the community. I imagine the 'Others' were white folk in and around Cunnamulla.

Dad recalls his stepbrother Bobby Bismark, Sarah Smith's son, was sent away from Cunnamulla to Fantome Island, via Palm Island off Townsville in north Queensland,

in 1953 as a Hansen's disease (leprosy) patient. Just as they dealt with the Kullilli people of Nockatunga Station they heartlessly dispensed of Bobby Bismark as the bureaucrats deemed him an undesirable. I came across an interesting letter when I researched Queensland Government department archives on Bobby Bismark and discovered the following:

29th September 1953.
The Director,
Invalid Pension,
Brisbane.

Sir,

Re Robert Bismark – Palm Island.

Enclosed please find Pensioner's Certificate No. 73284 in favour of the abovenamed who was in receipt of a pension at Cunnamulla.

On the 31st July, 1953, the Director-General of Health and Medical Services ordered the removal of this man from Cunnamulla to Fantome Island.

In report from the Manager, Keeroongooloo Station, dated 21st January, 1940, he stated that the mother of this applicant was an aboriginal who died in Quilpie many years ago and his father was an Australian, a white man (sic) named Albert Hagan.

In February 1940, he was granted his exemption the certificate number being 9/40.

It is presumed that you will pay his pension to this Office by fortnightly cheque as is done in the case of John Egmolesse, Jack Harrison, Atu Idagi all of Fantome Island.

Yours faithfully

Deputy Director of Native Affairs
The Acting Superintendent,
Palm Island Settlement
Via TOWNSVILLE

I found the reference to Albert as being ‘an Australian, a white man’, amusing. The reverse also occurred when some white men, living with Aboriginal women amongst their people on the fringe of towns in the same era, were officially identified as an Aboriginal or half-caste. I have personal knowledge of some white people today that have conveniently used these utterly inaccurate government records of their relatives as proof of their Aboriginality.

This issue, which became apparent during the Aboriginal and Torres Strait Islander (ATSIC) elections when proof of Aboriginality was essential, rose to the fore, even though these people never identified as Indigenous during their lives. Indigenous people are aghast at the audacity of the deceitful manner in which some people will go for monetary gain. Unfortunately the law is stacked on their side as the onus is on the complainant (accuser) to prove that the pretenders are not of Indigenous descent rather than them proving they are (de Plevitz and Croft 2003).

Although my paternal great grandfather was an Irishman I have never assumed the origin of his people and all that it entailed.

Dad told me that his older brother Alf chose a career in the army and saw active duty abroad. He also said Dave Wharton was one of the first murries from the Yumba to serve in the army. McKellar (1984 p. 81) explained ‘Dave joined the 2nd A.I.F in 1941’ and on his return from active service, like many other Indigenous service men and women, felt the full venom of racism from white leaders in Cunnamulla. Dave’s best mate Billy Ricketts, a non-Indigenous man whom he had fought with in the army, died in a horrific fire at Kerr’s Hotel. Distraught, Dave pleaded unsuccessfully with officials from the local Returned Services League (RSL) to be a pallbearer at his funeral (McKellar 1984). The failure of officials of the local RSL to grant Dave his request speaks volumes collectively of those individuals who have ‘developed public perceptions of themselves in relation to state policies of racial division’ (Green, Sonn et al. 2007 p. 403) and of a society reeked in bigotry.

Dave would have been happy to take a bullet in combat for his white digger mates in his army unit abroad, but back on home soil with not so much as a fist raised in anger to be seen, those very same white digger friends he served with were now more fearful of the barbs of discontent coming from other white people by any association they may have with a black man; even a former army digger mate.

Paradoxically, in the capital cities the war years gave a more vulnerable white Australia a chance to view Aboriginal people in a different light, conscious that they also fought in defence of the nation. Many felt the time was right to be more inclusive of the First Australians which saw leaders in the nation's capital fashion a new policy away from protection to assimilation. The government of the day expected that all persons of Aboriginal birth or mixed blood in Australia would live like white Australians.

Assimilation meant that the Aboriginal differences, then, must be eliminated. Assimilation of Aborigines is a form of homogeneity, Moran (2005) argues:

> 'Homogeneity, therefore, remained central to the settler nationalist dream. The explicit reliance upon whiteness dropped away, to be replaced by a less colour-coded Australian nationality' (p. 170).

That they might not want to be white was impossible. Moreton-Robinson (1998 p. 11) contends that 'Whiteness is imbued with power and confers dominance; it is also perceived as being natural, normal, and invisible'.

That Trella's descendants were not consulted on whether they wanted to be assimilated was irrelevant. That they might cherish their Aboriginality was immaterial. The government's Indigenous policy, whatever their intention, good or bad, was a public construct devoid of active engagement with the very people it was intended to benefit.

2.5 Jim Hagan

Away from the enlightened thinking in the cities, families in Cunnamulla continued building their own permanent dwellings from timber and materials they could scavenge at the rubbish tip or found discarded around the perimeter of town. There was no visible sign of practical assimilation in progress in Cunnamulla despite all the fancy words coming from bureaucrats in Canberra who probably never met an Aboriginal during their privileged lives.

In early 1950s my grandfather, who weighed in excess 120 kilograms, had a stroke that brought about an honest reassessment of his employment options. Albert, the breadwinner for his family, decided there was a demand for a camp based grocery store and began the process of establishing one. Although proud of his idea, as foreign as it was, many Yumba residents doubted his ability to successfully run a general store in their fringe camp. The concept was about as difficult to fathom for those living on the peripheral of the township as the white man's vision of sending a man to the moon. Neither had been achieved to date.

Grandfather chose to operate his business from home and sold the basic everyday grocery items, with a predominance of tin foods, excluding frozen food that required refrigeration. Unfortunately there was no electricity on the Yumba and the local shire council had no intention of supplying any. The business proved to be a financial masterstroke for grandfather, as the nearest store was several kilometres away in Cunnamulla and he had no competition on the camp.

Dad's home doubled, as his family's residence and the camp's store, and it soon became the most frequented place on the Yumba. Commercial salesmen would visit his humble abode to conduct their business. Although reluctant at first to visit the camp, the ongoing trade and familiar sign of the hard currency for the businessmen meant the return trips gradually became more tolerable (Hagan 2005). The only discomfort for the businessmen was when they drove beyond the cemetery where the bitumen road ceased and the huge potholes in the dirt road commenced. Grandfather had no electricity or running water in his humpy and the Yumba had no street lighting so it was in the businessmen's best interest to arrive during daylight hours.

I agree with Lipsitz's (2000 p. 518) assertion that the 'possessive investment in whiteness determines which people breathe polluted air, ingest lead in their blood streams, or eat fish poisoned by mercury' and, from my perspective, white officials determined blacks lived out-of-sight out-of-mind with the cemetery the principal demarcation line for its black and white population in Cunnamulla. It also was not a coincidence that the land the local council approved the Yumba to be built on for displaced Traditional Owners was adjacent to the sewage treatment works that enveloped and sat menacingly above humpy dwellings on the Yumba's southern extremities. In times of heavy rain the sewage overflowed, and according to my father (2009, pers. Comm., 5 December) resulted in the deaths of residents, especially babies, living adjacent to that foul smelling public facility.

Incongruously, the glow of whiteness dimmed appreciably when businessmen steered their cars onto an unsealed corrugated road to conveniently transact business with my grandfather on the Yumba. I would love to have been a fly on the wall listening in on the local chamber of commerce meeting in town when the whispers became a roar as it was confirmed that a so called 'camp black' was successfully competing against their more seasoned local members. Albert would often tell his children, in respect to his trade with the white businessmen, that money speaks all languages. Although local white businessmen despised my grandfather for capturing that niche market of the Yumba blacks they would have at least had to acknowledge, if not in person, that he had independently created and sustained a thriving grocery store on the other side of the cemetery. Competition was alive and well in rural Queensland but in this instance it was coming from an entrepreneur of a darker aspect.

Grandfather operated the store for almost two years, contrary to initial trepidation on the part of local Yumba murries, until he had his second stroke and became too ill to continue (Hagan 2005). Although my grandfather had a basic primary school education he was highly motivated and intelligent. After he retired it became apparent that no one within the family or the community had the drive or desire to carry on the business. Grandfather's community grocery store closed suddenly and the Yumba Aborigines resumed their long trek into town to spend their hard-earned dollars on the everyday essential items purchased from apathetic white businessmen at inflated prices.

During the time Dad was going to school a young Aboriginal girl from the fringe camp, around his age, was creating a problem for a privileged white boy that she probably did not know about at the time, and to this day, would still be totally oblivious to. John Stubbs (2001), a former political writer for the *Sydney Morning Herald* and *The Australian*, recalled going to primary school in Cunnamulla from 1944 to 1951 and despite his privileged background of being the son of the local solicitor and living in upmarket Emma Street he was always beaten in any test at school by Aboriginal girls.

> I don't know how but somehow we had *The New Yorker* regularly at home, and books including leather bound volumes of Zola and Guy de Maupassant … But despite that privileged background, I could never come first in my class. I was almost always beaten on any test by a girl called Joan McCarthy. I don't know what happened to her but her younger brother, R.E. 'Darby' McCarthy, got a freak opportunity to escape from the dusty playground and became a famous jockey. Another Aboriginal girl who was usually ahead of me used to do her homework under a streetlight.

By speaking of girls in his class at school who were more scholarly gifted than himself as Aboriginal, Stubbs (2001) was acknowledging whiteness 'to assign everyone a place in the relations of racism' (Frankenberg 1993 p. 6) even while he was showing its inadequacy.

This was an era when racism was rampant and very little positive cultural teachings were imparted to Aboriginal students. 'On the blackboard the teacher wrote the aims of her lesson: 'To promote respect and understanding of other racial groups'. However the teacher then began, "We are going to learn about Australian niggers"' (Poad, West et al. 1990 p. 191) was about as close to a compliment as little Aboriginal students were likely to hear back then.

When Dad completed Grade Four at the Cunnamulla State School, his father wrote to the Head Master, prior to the school break-up in December, seeking his permission for him to leave. As he would be fourteen in April his father wanted him to go and

live with his uncle to learn to be a stockman. The Head Master wrote to his father approving his request, stating 'I hope he grows up to be the man he gives promise of being so as a boy' (cited in Hagan 2005 p. 22). Dad kept that letter for many years but regrettably it was lost during the process of moving house.

It was the accepted thing in those days that young boys would go to one of their mother's brothers to be taught all the necessary things that prepared them for employment in the pastoral industry. In this instance Dad was sent to work with his Uncle Jim Smith. His uncle was a boundary rider on Tilbooroo Station, approximately 100 kilometres west of Cunnamulla. He taught Dad how to ride a horse, muster sheep and cattle, milk cows, slaughter for meat and all the other on-the-job work skills that were considered prerequisites in gaining employment in rural Australia in that era. Dad stayed with his uncle for twelve months learning all there was to know about life on a station. After twelve months the station owner offered him a job and he was paid a weekly wage of two pounds.

All workers in rural Australia in those early days knew of the inherent dangers associated with their work particularly the extreme conditions and remoteness of their work environment. Dad said he had his fair share of physical injuries, the resultant scars of which he carried with him throughout his life as a permanent reminder of that era. The most serious of all his work accidents of note occurred not long after Frank Jordon, the station owner, offered Dad the job as a station hand. During extended periods of drought foliage of the mulga trees were a good source of food for sheep; trees were burnt and the stock fed off tree leaves low enough to reach on hind feet. Branches that were out of reach were knocked down and scattered loosely around its vicinity for easier access for hungry sheep. On this particular day Dad was told to take an axe and lop the branches off the trees that had been burnt a couple of days earlier. Obediently he saddled his horse and carried the axe about seven kilometres to where the trees were located. Dad tied his placid horse near the full-bore drain and commenced cutting the elusive branches.

A couple of hours later something inadvertently happened that took his attention away from the swing of his axe and the next thing Dad knew was a branch sprung unexpectedly towards his head and he immediately felt an acute pain in his left eye.

He dropped the axe and rushed to the bore drain to wash his eye but unfortunately the water did not relieve the excruciating pain. Eventually he rode the horse back to the shearing shed where he lived after painfully opening and closing three gates. Dad's Aunt Lucy fussed over him and immediately admonished his Uncle Jim as she always did. But there was nothing he could have done because he was elsewhere working on the large sheep station at the time of the accident.

The next morning a white scum had formed over the left eye and Dad's Uncle and Aunt realised it was more serious than first thought. Dad said the boss was notified immediately and that afternoon a station vehicle came out to his camp and he was taken to the homestead where he caught the slow mail truck the following day into town. Dad said he has never endured as much pain as he did in those forty eight hours after the accident; not knowing what was to become of his sight and more immediately how he was going to relieve the piercing pain in his left eye. On arrival in Cunnamulla he was driven directly to the hospital where the doctor told him there was a piece of wood stuck in the pupil of his left eye and he would have to remove it immediately (Hagan 2005 p. 24). Dad realised then that when he struck down on the branch, which brushed against his face, the sudden jerk of his head broke off a small piece at the end that dislodged and penetrated his eye. After the doctor removed the splinter Dad was kept in hospital with the eye heavily bandaged. Dad was given strict instructions by the medical officer not to touch the bandage that covered his affected eye with reassuring words that he would remove it after a period of rest.

Six weeks later it was a great relief for Dad and his family to be informed that he had not lost sight of the left eye. That dramatic event in Dad's life occurred in 1947 when he was only fifteen years old. Twelve months later the visiting optometrist told him that he had lost about 60 percent vision in the eye and he would have to wear spectacles, with a stronger left lens, for the rest of his life to alleviate the strain on the good eye. That was Dad's introduction into the workforce. Since the accident he resumed work on cattle and sheep stations, travelled with cattle droving teams, worked in shearing sheds, fencing camps and worked on the local Paroo Shire Council.

Twenty years prior to Dad's eye accident a company called Felton, Grimshaw and Bickford marketed a popular pain killer medicine that went by the repulsive name of *Nigger-Cure-All* and was all the rage. I doubt it would have had any effect for Dad's injury but it was the only medicine available for many black stockmen working miles from the nearest hospital during that era, as reported by Biskup (cited in Franklin 1976 p. 95):

> In 1934 employers of Aboriginal labour were supposed to be responsible for the health of their employees, but prior to World War II, their medicines were usually limited to epsom salts, camphor, pain killer and influenza remedy marketed by Felton, Grimshaw and Bickford as *Nigger-Cure-All*.

In that era the whiteness naming rights, irrespective of how odious titles like *Nigger-Cure-All* were, typifies the 'normativity of being white, that is, the invisibility to white people of the privilege and dominance they experience as a consequence of being white' (Green and Sonn 2006 p. 381). Frankenberg (1993 p. 1) argues that 'whiteness has a set of linked dimensions, the location of structural advantage of race privilege' and this is palpably established with the derogatory labelling of consumables such as *Nigger-Cure-All* (Franklin 1976), *Nigger Licorice* (Hagan 2007) and *Nigger Brown Boot Polish* (Hagan 2005).

The exercise of applying calculated offensive titles to consumables knowing it humiliates and provokes First Nations people, because they could, validates whiteness at its core in usurping ownership over and control of all that white authority pervades. A bit like the fact that white men with political influence could also pass, at the drop of a hat back then, 'Acts (that) provided the government with power to restrict the movement of Aborigines and made it an offence to entice, transport, or assist an Aboriginal to leave a reserve' (Franklin 1976 p. 93).

After Dad finished work on Tilbooroo Station his next job away from his uncle Jim was on Tinninburra Station a little further west. It was on Tinninburra where Dad worked under a very proud Aboriginal head stockman in Toego Robinson. Toego was also from the Yumba and worked on many sheep and cattle stations in the far southwest. It was during my research on this era that I was made aware, by my

brother-in-law Roger Robinson (2004, pers. Comm., 20 May), from the Murrawari tribe in north west New South Wales, who told me of a distressing story regarding his grandfather Toego who was bashed unconscious by a policeman at Eulo (Courier-Mail 2003). Eulo was then and still is today a small opal-mining township of around a hundred residents, 75 kilometres west of Cunnamulla. Roger said his father Colin told him he was returning with his family, including his dad Toego, mother Eva, brother Patrick and sister Rita, from Tinninburra, when the incident occurred. Dad was working with Toego around this time on Tinninburra.

As usual the Robinson family, returning to Cunnamulla, made a detour around Eulo and continued along the rough Eulo/Cunnamulla corrugated dirt road. About five kilometres out of town their old car grounded to a halt with the smell of burning rubber sifting through the open car windows. On alighting from his car, Toego removed the deflated tyre and in the blazing mid-afternoon summer heat carried it back the five kilometres to Eulo to have it repaired. During their father's absence the three Robinson children amused themselves by wandering off exploring the bush on the side of the road under the watchful eye of their mother.

After paying for the repaired tyre at the local garage, Toego commenced rolling the inflated tyre back to his family's car when he heard the noise of a slow moving vehicle approaching from behind. As he turned to wave the car on he noticed the vehicle had eased up considerably and within seconds had pulled up beside him. To Toego's dismay he observed the familiar but scary attire of a uniformed constable sitting in the driver's side of a police vehicle. The police officer appeared friendly and offered to drive him the short distance to his family. There would have been very little small talk entered into inside the government vehicle and if so it would have been one way.

The policeman joined the family outside the car and began observing Toego screwing the nuts back onto the wheel when, and without warning or provocation, he grabbed the crank handle from the front of the car and began beating Toego violently until he lost consciousness. The family huddled together in total disbelief and genuinely feared for their husband and father as well as their lives, uncertain of what the deranged officer would do next. The policeman satisfied that there was no movement

coming from an inert Toego, casually got back into his car and sneered from the moving vehicle at the terrified family as he turned it around and drove back in the direction to his base in Eulo.

Stories of similar violations to that of Toego Robinson at the hands of police are sadly recounted by Aborigines today (Watson 2010, Weatherburn 2014) to the embarrassment of the government who still perpetuate the romanticised myth that Australia was peacefully settled (Windschuttle 2002); a flagrant denial of past treatment of Indigenous people. Tascon (2008 p. 265), commenting on deniers of past wrongs like the Howard's, Windschuttle's and Bolt's of the world, argues that their narrative along the lines 'nation is "good", is not racially-defined, is not racially-motivated, was not defined by acts of outright racial harm through its history; these are the national narratives within which the participants exist; this is the position from which white privilege operates'.

Later in Dad's working life he joined up with a white contractor by the name of Jack O'Shea and his wife Ivy to do a cattle drive throughout the west. Dad stayed with Jack and his wife for a couple of years and saw the birth of their children as they travelled the vast southwest Queensland country in their old wagonette. Dad described his relationship with Jack as the turning point in his short career and one that would have a profound influence on his life for many decades to come. When Jack was offered the job as foreman on Bulloo Downs Station he immediately offered Dad a full time job to work with him there.

At last Dad was able to visit the tribal land of his grandmother, Trella. He told me he immediately felt the spirits of his ancestors atop his horse when mustering cattle within the boundaries of the immense Bulloo Downs Station's pastoral lease

Dad was a fit and handsome young man and as he approached the latter years of his teenage life he developed other interests, besides the four-legged creatures that he was being paid to watch, and during one of his many return trips to the Cunnamulla Yumba from Bulloo Downs Station he became transfixed with a striking young lady from the Kooma tribe (McKellar 1984).

For the first time in Dad's working life the fascination he had for horses, sheep, cattle and all things pastoral were to play a secondary role to his female acquaintance that over a short period of time he had developed a deep affection for.

2.6 Jean Hagan

The land barons also displaced my mother's people from the Kooma tribe of southwest Queensland. Mum was born in Cunnamulla on 7th April 1937 to Jim Mitchell and Kate Whitford. She is a descendant of the Mitchell family from the Kooma tribe on her father's side and Foster family from the Gungarri tribe on her mother's side (Hagan 2005 p. 28). In a situation similar to Albert and Jessie Hagan's nuptials Mum's parent's marriage was between members of neighbouring tribes located between the townships of Bollon and Mitchell in southwest Queensland. It was difficult in those days to marry within the tribe for fear of marrying the wrong (*yurdi*) meat (partner who is related by blood).

Marrying the wrong skin (Musharbash 2010), back in the days of my grandparents, was seldom made and if so was corrected the tribal way, and very swiftly. There would have been the occasional elopements but it was an act that guaranteed the couple never entered the land of their tribe again and if so not without serious recriminations.

In scenes identical to the Kullilli people British colonists occupied the Kooma people's land with their cattle and sheep, thereby depriving them of access to popular food sources. Not surprisingly violence broke out between the races over access to land, rivers and native flora and fauna. My mother's father Jim Mitchell was from the Kooma tribe whose land was situated between the Nebine and Balonne Rivers.

Food was plentiful for the Kooma people on their land but with the arrival of white graziers and their insatiable debauchery, in eliminating Aborigines near major watering holes on the basis their appearance frightened cattle, Kooma people's numbers dwindled considerably. Missionary William Ridley (cited in Johnston 1988) describes their tragic plight on the Balonne River in 1855:

> But when the country was taken up, and herds of cattle introduced, not only did the cattle drive away the kangaroos, but those who had charge of the cattle found it necessary to keep the aborigines away from the river, as their appearance frightened the cattle in all directions.
>
> After some fatal conflicts, in which some colonists and many aborigines have been slain, the blacks have been awed into submission to the orders, which forbid their access to the river. And what is the consequence? Black fellows coming in from the west report that last summer very large numbers, afraid to visit the river, were crowded round a few scanty water holes, within a day's walk of which it was impossible to get sufficient food … that owing to these hardships many died (p. 300).

Greed for land turned white men into salivating beasts and their lust for more land created a mindset that hardened to such an extent they no longer displayed emotion at the sight of the manifest decline and suffering of Aboriginal people. It was simply eliminating another obstacle on their way to progress and prosperity. It was a contention in that era, as it still is today, of 'deeply entrenched colonial beliefs that national prosperity depends on the ingenuity of the white population. Within this perspective, whiteness and economic prosperity are inseparable' (Green, Sonn et al. 2007 p. 403). Whiteness made possible the justification of indiscriminate killing of vast numbers of Aboriginal people by frontier land plunderers in the fervent belief by them that economic pioneers was a desired title far greater than the stench of mass murders.

Kooma people, through necessity, adapted to their rapidly changing circumstances and applied resourceful and innovative measures to the extent that their population numbers gradually recovered. Today their descendants are now prominent in many rural towns in western Queensland (McKellar 1984).

Mum's Mitchell family is one of the largest families in southwest Queensland. Her paternal grandmother, Susan Andrews, was a Traditional woman of the Kooma tribe who, as a teenager, eloped with Irishman Jack Mitchell. Mum's first cousin Herb Wharton wrote of his grandfather Jack Mitchell having an association with the

infamous Kelly outlaw gang, in his book *Yumba Days* (Wharton 1999 p. 129): 'I remember some people describing him as a tall, bearded Irishman, supposed to be associated with the Kelly Gang'.

Mum said her grandparents lived in and around the Bollon community and raised a family of six girls and five boys. In 1920 Jack Mitchell bought a block of land on the Nebine River and used that base for his children to work on various sheep properties in the district. Unfortunately Susan, known as Granny Mitchell, had to travel with her two seriously ill youngest daughters to seek medical attention at the Cunnamulla Public Hospital. Granny Mitchell was devastated when her daughters both died soon after arriving at the hospital. Instead of returning to her traditional land she instead set up camp on the fringe of town. She sent for her children who journeyed to Cunnamulla soon after and raised them from the Yumba until 'she passed away in 1944' (McKellar 1984 p. 50).

Mum's father Jim was the fourth child born to Sarah and Jack Mitchell. He had limited formal education and like most Aboriginal boys in that era was sent to work to earn his keep at a young age. When Jim reached the latter part of his teenage years he fell in love with a woman with an infectious smile from a neighbouring tribe named Kate Whitford. They later married and raised a family of nine children.

My maternal grandmother was an amazing lady, fluent in the Kooma language and possessed extraordinary knowledge of her culture. Her father Frank Whitford married Jane Foster and had three girls: Kate, Winny and Violet. Violet in her late teens married Jack Skewthorpe (Darren 2010). Jane Foster had two sisters Maude who married Jim Moore and Alice who married Tom Dodd. She also had three brothers including Herbert who married Alice Harper, Alf who married Teresa Waddy and George who married Mable George. Jane's father was Jack Foster and her mother's maiden name was Lucy Sheridan (Darren 2010).

In a report on Application by Half-caste for *Exemption from the Provisions of the Aboriginal Protection and Restriction of Sale of Opium Acts* it states that Frank Whitford's father, James Whitford (my maternal great great grandfather), was an Englishman and his mother Mary Clifton was a Queensland Aboriginal.

I was fascinated and saddened to have confirmed the rumours I had heard over the years about old man Jack Mitchell's estate. Herb Wharton (1999), author and a descendant of the Mitchell clan, wrote that Mitchell bought a significant grazing block in the Nebine area where he spent the rest of his life but his children lost their inheritance to an unscrupulous policeman soon after his death:

> He left that station to his son Bill, who gave the deeds and Mitchell's will to a policeman for safekeeping. That was the last that was seen or heard of that. Uncle Bill and the rest of the family ended up without any inheritance (p. 131).

Instead of reaping the rewards of an inherited and significant parcel of rich grazing land today the Mitchell family are landless because of a policeman who used his esteemed position in the community to illegally acquire old man Mitchell's land. Despondently the erring on the side of caution was something Bill Mitchell did not do on this occasion and his faith in the resident policeman to honour his civic duty to secure the trust for his siblings and their descendants was speculative at best.

Walter and Butler (2013 p. 400) points out that 'Whiteness, and specifically settler Whiteness, is an inextricable aspect of understanding race relations'. To comprehend the enormity of the theft by a policeman, because he could, of land willed by a white landowner to one of his adult Aboriginal sons is a travesty of justice and privileged by the social structures of whiteness that condoned that type of conduct in that era.

Mum, the fourth born of her family of nine children: five boys and four girls, was raised on the Yumba and after attending school for six years she was sent off to work, with the blessing of her mother, as a domestic servant on sheep properties on the land of her traditional people around the Bollon district. After marrying Dad she gladly gave up her demeaning job of washing her white pastoral owner's dirty linen, pots, pans, clothes, floorboards and any other soiled items that needed cleaning.

Unfortunately, for a woman conscious of her cleanliness reputation, whiteness reared its ominous head when her good name was trashed by judgemental officialdom. Nine months before I was born on 20 December 1959 Dad and Mum's humble abode was

the focus of a visit from health officials and police. Unfortunately the visit was unannounced and took the form of a house inspection; in the same way one gets an inspection from a real estate rental officer when renting a house today. The contemporary variance being in this analogy is that notice is given prior to inspection. In this instance neither Dad nor Mum was at home or aware of the inspection. Dad only found out about this inspection when researching our family history almost half a century later.

The letter (Hagan, JP 2003, pers. comm., 7 April) was sent on the 3rd March 1959 from the Superintendent of Palm Island to the Protector of Aboriginals Cunnamulla. The letters and implied inferences disturbed Dad immensely.

Dear Sir,

Re: Robert (Bobby) Bismark

The above, who was granted an exemption in 1940, transferred from Cunnamulla to Fantome Island on the 8th August, 1953, as a Hansens Disease patient.

The Director General of Health & Medical Services has authorised his release from Fantome Island as he is now clear of Hansen's disease. Bob has requested that he return to live with his brother Jimmy Hagan whose address is given as Camp reserve, Cunnamulla. He has not heard from his brother for 7 years, and it is not known if Jimmy Hagan is still at the same address.

It is asked that you let me have a report on the suitability of accommodation offering after taking into consideration that Bob must take certain drugs, which should be available to him at Cunnamulla Hospital. Failure to comply with this could bring about a recurrence of Hansen's disease.

He would be obliged to attend the hospital on dates to be determined by the Director General of Health, to have a smear taken. He is in receipt of an Invalid Pension and should he elect to reside on a Settlement or Reserve, his pension would cease.

Yours faithfully,

Superintendent.

On the 24th March 1959, nine months before I was born, V. M. Barlow, Protector of Aboriginals, Cunnamulla and Dr. Edwin T. Johns, Medical Officer of Health, Cunnamulla, undertook an inspection of Dad's humble abode on the Yumba.

Office of Protector of Aboriginals
Police Station, Cunnamulla
24th March, 1959

Re: - Robert (Bobby) Bismark. Your ref. NF/1512.

Sir,

I have to report with reference to your correspondence of the 3rd instant, concerning the request of the above named person to return to Cunnamulla and live with his brother Jimmy Hagan, of The Council Camping Reserve, Cunnamulla, that I have made inquiries accordingly and have come to the conclusion that such request should not be granted.

Jimmy Hagan is still resident at the Council Camping Reserve, Cunnamulla, with his wife and family, none of who are wards of the Department of Native Affairs.

The home occupied by Hagan is a three-roomed hut of wood and galvanised iron construction, is in extremely bad state of repair, and consists of two bedrooms and a kitchen.

One bedroom is already occupied by Hagan, his wife and one small child, while the other room is occupied by a female adult relative. There is no additional room for any other person in this building.

The home and surroundings are dirty and untidy and only the barest minimum of furniture and household utensils are provided.

I also had Dr Edwin T. Johns, Medical Officer of Health at Cunnamulla, inspect these premises and he found that the conditions of hygiene are extremely poor and completely unsuitable for any person suffering from or convalescing from any chronic infective disease, and his certificate to this effect is forwarded herewith for your information.

> It appears to be quite obvious that if Bismark did return to live at Cunnamulla under the existing conditions of the accommodation it could bring about a recurrence of Hansen's disease.

V. M. Barlow
Protector of Aboriginals

Dad does not recall Mum or himself giving permission to or being present when the inspection took place. Dad told me that the young child described was my sister Pam and the adult relative was his mother, Jessie. Dad said he was distressed to read the description of his residence as being *dirty and untidy* as both Mum and his mother were meticulous with their cleanliness around the house. He said that they were always sweeping the earth floor with a brush, fashioned from branches of a gum tree broken from our backyard, and they would cart water several hundred metres away to sprinkle on the ground to prevent dust within the shelter. Dad said the house and its surrounds were spotless and at no time did he observe rubbish or debris scattered around his home.

What Dad experienced on reading these distressing accounts of his humble abode being *dirty and untidy* by a medical official is, as Walter and Butler (2013 p. 400) describes as, 'Whiteness exemplified by its links to dispossession, disadvantage, injustice, possession, privilege and power'. More poignantly the aspersion of Dr. Edwin T. Johns, of my parents subjecting their family to life of squalor, is malicious in the extreme and represents the quintessence of whiteness in rural Australia in that era in all its xenophobic grandeur.

Dad said that if the medical officials had consulted him on their concern about lack of accommodation space he would have organised family members to assist in the construction of an additional room to the house.

In a memorandum dated 23rd April 1969 the following message was sent at 10:35 a.m. from the Manager Palm Island to the Manager Woorabinda via Duaringa.

> Robert Bismark died Fantome Island today 23rd. Please inform relative's funeral today.

Unless his relatives and friends had access to a Lear jet to fly direct from Woorabinda to Palm Island, Bobby would not have had a family member at his funeral. Dad told me that he was not aware of anyone from Cunnamulla travelling to Palm Island for the funeral or being notified of his death.

One would have thought the government of the day would have delayed the funeral arrangements to at least provide his family with an opportunity to make arrangements to attend his funeral. But then again given the history of paternalism shown towards this self-effacing man, it would be a bit much to expect a compassionate thought entering the minds of heartless and racist government officials (Probyn-Rapsey 2007, Norman 2011) back in that era.

Bobby never did get to visit his people in Cunnamulla since leaving on 8th August, 1953 for treatment on Fantome Island over 2,000 kilometres away. The many family members and friends of Bobby Bismark living on the Cunnamulla Yumba were not afforded the right to provide for a man who had fought and overcome the dreaded disease of leprosy that afflicted many Aboriginal people (Johnston 1988). It was a wondrous personal achievement for Bobby in overcoming leprosy but despondently he could not defeat the one thing that would have united him with his family in Cunnamulla and that was the depravity of bigotry that characterized the government immersed in whiteness in that era.

When I think of Bobby today I think of the prophetic words of James Baldwin (1972), a brilliant African-American writer who experienced the worst that America had to offer in the area of race relations and social justice:

> If one really wants to see how justice is administered in a country, one does not question the policeman, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected – those, precisely, who need the law's protection most – and listens to their testimony (p. 9).

If we were to judge a country by how it treated its most disadvantaged, the Bobby Bismark's of this world would render the Australian government's measurement barometer motionless at 0 on a calibrated system of 0 to 10.

Sol Stein (2005 p. 11) in speaking of his good friend James Baldwin wrote:

> It is Baldwin's ability to imagine such mirror images, his insight as a writer into the visions that people have of others and otherness, that enable readers who are not black to momentarily experience what a black man feels, and invites the black reader to grasp the origins of the white man's desperate clinging to a prejudice that drains both white and black of some of their humanity.

It is the stories passed down through the Hagan generations that allow me to provide the perspective, discussed at length in this dissertation, of the extent to which the white man's desperate clinging to 'a prejudice that drains both white and black of some of their humanity' in this country that Sol Stein (2005 p. 11) communicated so prophetically.

Unlike other nations that have shown signs of closing the gap of inequality between the races (Aymer 2010), Australians – through their political and judicial leaders – have chosen to stay on the course shaped by their forebears in maintaining the status quo of keeping Aboriginal Australians in their place: at the bottom rung of the social ladder where 'Aboriginal Australians experience disadvantage relative to other Australians across multiple socioeconomic indicators' (Einfeld 2012 p. 199).

Against the odds my mother raised her children the best she could whilst Dad was absent, by necessity, working for long periods of time away from home to earn enough money to put food on the table, pay bills and provide for his growing family's needs. It was my mother who made a decision to cease working for white property owners in her ancestral lands as a domestic after she met my father and they agreed to marry. She never once complained to me of those difficult times working as a domestic servant but I could tell by her often used words to criticise other comfortably assimilated blacks acquiescing to white people in her presence: 'there

they go again trying their best to please the white man', that her early work history on sheep stations may not have been pleasant ones.

Mum was the one constant of stability for her five children and was a great role model for us: she never drank alcohol or bet on the horses, although she enjoyed a game of cards, and partook in a flutter on the pokies and a day out at the bingo later in life when those options were available post Cunnamulla years. The vice that she enjoyed at an early age and throughout my teenage years, of smoking, because her peers did and slick advertising seduced her, was the vice that shortened her life when she passed on through smoke related health issues at 62 years of age in 2000.

I still miss my mother dearly and wish she could be around today to see Rhonda and my children, her grandchildren, as well my other sibling's children grow into fine young adults. She left this world far too early but her presence was felt by many who came in contact with her and is still felt today through the indelibly impressive legacy she left for all her descendants to remember and celebrate.

Mum's legacy of maintaining pride in oneself, family and culture in the face of unprecedented and strategic Whiteness challenges will be further explored and validated with an examination of my life's journey.

2.7 Stephen Hagan – My beginning

'Mapping the processes by which the self is understood (and thus constituted),' argues Boucher, Carey et al. (2007 p.17) 'is vitally important for our understanding of the operation of power'. In support of my dissertation, the lens through which I viewed the unevenness of power distribution between the races, from my years in Cunnamulla and subsequent communities I have lived in up to the present will be discussed. In that vein it is of all that I have observed and had relayed to me through direct and secondary sources of past intersections of the races that are the building blocks of knowledge creation (Smith 1998). The interpretation of past experiences shared to me by my parents and as told to them by their parents is the Hagan's collective ontology: the organisation and classification of shared information that I view as our unique Indigenous knowledge.

I was born at the Cunnamulla Base Hospital on the 20th December 1959 when Mum was 22 and Dad was 27. At that time my eldest sister Pam Elizabeth was two years of age and the apple in the eyes of my proud parents. This was an era when Australian children skipped to 'Snakey, Snakey, don't bite me – Bite that nigger behind the tree' (Evans 1999 p. 3) during recess at schools across our parched expansive country.

On reflection of my entry into the world, I often wonder after 171 years of white settlement why the great race divide and its associated lifestyle inequalities had not been narrowed and why, as a contemporary thought, I now find myself writing a dissertation on such an inauspicious topic that should not have abiding currency today?

Soon after I was born Dad packed all the family's worldly possessions into his trusted old Holden Ute and drove 300 kilometres west over rough dirt roads to Mount Margaret Station with hot but contented passengers: Mum, Pam and myself. Dad secured a contract as boundary rider to manage the famous Dingo Fence that passed through the vast property: the longest fence in the world that runs 5600 kilometres from South Australia through Queensland (Woodford 2003).

As I grew older Mum settled our growing family on the Cunnamulla Yumba, whilst Dad provided for us by working extended periods away on sheep and cattle properties in far southwest Queensland. Mum, although missing the presence of Dad, was always engaged with her sisters and cousins with day to day chores and social activities that passed the time of day until he returned home on short breaks from work. As most abled bodied men were absent from their homes on the Yumba working in the sheep and cattle industry, child rearing practices was a communal responsibility spread evenly between female first cousins and second and third cousins thereafter. Child removals (Young 1998, Robinson 2002) were practically non-existent on the Yumba as alcohol and drug abuse were not as prevalent as it is today. If a mother was experiencing sustained relationship issues with her child or children – a consequence of marriage breakup or personal trauma – it was a normal practice for a close next-of-kin to intervene, with the mother's consent, and raise the

child or children until such time as she was in a fit state to resume that crucial maternal role.

As a child with a wild imagination, I amused myself by creating inventive games to play with other equally imaginative kids from the Yumba. Most of these games were played on the imposing sand hill that divided us from the white kids in town and were with toys carved out of wood. At a young age it never occurred to me that white kids across the sand hill were amusing themselves with similar hide and seek games played with real toys their parents purchased from the local store or from a trip to the city whilst on other business. That observable difference of having considerably less in the form of material possessions than my white counterparts only became a cause of concern for me when I started to go to school and especially on reaching my teenage years.

On the occasional Sundays after church the white folk of Cunnamulla, filled with compassion for the darker 'Others' would drive to the end of the bitumen road to hastily unload boxes of clothing and toys, and then speed off in their cars back to the safety of their 'white' town. It did not matter to us kids that the clothes and toys were rejects from their children or items their children had outgrown. On occasions after the sheep and cattle property owners had received their wool or beef cheques in the mail and the lady of the house decided to upgrade their wardrobe, older Yumba residents would also find items of interest inside the large discarded cardboard boxes for themselves.

After the white folk had departed there would be a mad rush by us Yumba kids to see what we could claim from inside the hurriedly placed boxes. This benevolent act by local Cunnamulla white folk was, as Endres and Gould (2009 p. 419) contend, in words that reinforce the deficit model: 'Using White privilege to "help the other" is an explicit acknowledgment of White privilege/Whiteness accompanied by a justification for sustaining privilege and power as a means to help others'.

It would seem to me, looking back over such acts of altruism back then, that white folk did it because they could. I do not ever recall an instance during that era of fringe dwellers delivering used clothes or other potentially desirable possessions to poor

white folk living in the exclusive white township. Charitable reciprocity with white people was non-existent because fringe-camp Aborigines were impoverished and barely had enough to provide for themselves and their relatives to even consider offering such reciprocal benevolence to the town's underprivileged white folk.

When I commenced school it became obvious to me that there was indeed a huge social chasm between black and white kids, in particular how they arrived at school, their dress and food eaten for lunch. As I progressed through primary school years and into junior high I also developed a very inquisitive mind. It was patently clear to me that white people controlled all facets of our lives: they were the teachers, entrepreneurs, preachers, policemen, mayor and councilors who made all decisions and amended laws to suit their privileged 'white' needs, and occupied all other influential roles one would expect to see discharged in any small, rural community.

As a child growing up in Cunnamulla I was constantly reminded, by schoolteachers through pictorial references in books, of the origin of man. The man Adam and his female companion Eve always appeared as white people. Vassenden and Andersson (2011p. 588) argue the lighter shade phenomenon of Adam and Eve prevails because 'whiteness hides religiosity, faith has to be communicated to become mutual knowledge between two interaction partners'. And therein lies the imbalance of teacher and child: the teacher had the power to use a biased narrative to impart knowledge and even worse, to take advantage of their authoritative position in front of the classroom of impressionable students to stray, at their whiteness convenience, from routine instruction and inculcate their overtly partial religious teachings. Endres and Gould (2009 p. 432), on the central theme of teacher's influence over their students, asserts: 'The pervasive dominance of Whiteness and White privilege on the university campus seeps into the classroom, often through the actions of the instructors' because 'of the normalisation of Whiteness in the academy, it is easy for instructors to view students and classroom situations in ways that normalize Whiteness'. Whatever instruction we received from teachers in that era was taken as incontestable fact. It was, however, later in life when I started questioning why everything was created and controlled by white people that I read that the origin of man could be traced, from carbon dating of fossils, to human expansion out of Africa (Deshpande, Batzoglou et al. 2009).

By Blainey's account, 'They lived in Africa and, two million years ago, they were few' (2000 p. 3). It is my understanding that black people are Indigenous to Africa. So why are black Africans not credited with creating foremost footprints on earth, as opposed to the Eurocentric biblical teachings on a white Adam and his white companion Eve, that we learnt about back then and which is taught unaltered today, who are credited with that historical feat? So what of Adam and Eve, I thought as a youth back in Cunnamulla all those years ago: were they fictitious people – the first humans ever – in the image of their author's creation? Where is the proof to support the existence of this famous and highly sacrosanct white man and woman who ran around unclad with a part eaten apple? Conflicting historical records places them specifically in the Garden of Eden, in Jerusalem (Pearlman 2005) and not vaguely in Africa.

Feminist scholars also raise concern of the veracity of the Adam and Eve representation by the church. In their biblical depiction of Eve the church identifies her as the principle transgressor even though Adam also ate from the same forbidden fruit. 'Depictions of Eve as evil have endured for millennia,' asserted Parker (2013 p. 731). 'Ancient interpreters reasoned that the woman yields to the serpent's appeal, revealing her base nature, and receives God's punishment before the man, showing her greater crime.' Even in our progressive times in Australia the Christian story of Adam and Eve still trump all theories on the origin of mankind. Byrne (2012 p. 106-107) maintains the 'need to nurture respect for religious difference appears ill-served by policies which are ostensibly multicultural but which privilege one faith, enable extremist teaching, and limit the possibilities for desegregated learning about religious difference'. Frame (2009 p. 2-3) takes the belief in the origin of man to a new level when he states nations, like Australia, whose common life is shaped by theological convictions, 'regard any disparagement of their religious tradition as an insult to the integrity of the state and the dignity of its citizens, and may react to allegations of heresy, blasphemy or apostasy by invading the offender's territory'.

The white man has the propensity of writing his version of history and maintaining that perspective as an incontrovertible fact despite glaring errors in his literary recordings. Claremont (2004 p. 226) contends 'some Australians felt their whiteness

challenged, perhaps by the perceived greater claim of Indigenous Australians to be Australian, to belong' and further that 'White man may have been the alien invader, but to be fully settled he desperately needed to feel at home'.

J.D. Lang (cited in Fitzgerald 1982), a leading colonist, turned to quoting Scripture to justify the brutal invasion and legal settlement of this country:

> The white man had indeed only carried out the intention of the Creator in coming and settling down in the territory of the natives. God's first command to man was 'Be fruitful – multiply and replenish the earth.' Now that the aborigines had not done and therefore it was no fault in taking the land of which they were previously the possessors (p. 204).

Back then the issue of terra nullius (Kramer 2015) or colonisation (Walter and Butler 2013) was not really discussed at school or around the camp fire, but I did wonder how I was going to pass on to my children later in life the stories passed on from Trella to her son Albert, to his son, my father Jim, and then down to me, of our Kullilli people coming from the Moondigarda Rainbow Serpent (Wharton 1996) onto our unique and explicitly hallowed land that nurtured and sustained us. These traditional linkages to land were at odds with all my school teachers' history instructions yet consistent in every facet as those proffered by Blainey (2000) that Australia was empty 100,000 years ago and had no human footprints. All the time I kept asking myself why are historians (Blainey 2000, Windschuttle 2002) unable to acknowledge that we were here first? Why did we have to come from somewhere else?

Steven and Evan Strong (2011 p. 3), who's significant body of work points to mankind evolving from Australia, argues against the Out of Africa:

> If the entry date, as proposed, is 45,000 years ago (when the out-of-Africa exodus began), it contradicts many archaeological facts, as people of disputed origin and genetics were already in Australia.

This unequivocal historical teaching of the origin of man has its roots in Whiteness theory, where my well-intended teachers still ran the traditional accepted line that Adam and Eve were white.

I now understand why my formal introduction to the history of life, taught to me as an impressionable primary school student, were of a white tinge: Adam and Eve, Jesus, Angels, Snow White, Alice in Wonderland and Captain James Cook, to mention a few. The stereotypical miscreants in life taught to me, and every Aboriginal child from our fringe camp throughout the 60s and 70s, by teachers were smeared with the darker shade: the devil, slaves, natives, ravens, black spiders, the big bad wolf in Alice in Wonderland, as well as the clothes of Dracula and other folklore villains. Goudge (1995 p. 1) contends that the making of an unforgettable villain is its dimension and blackness: 'a skilled writer will make the mistake of painting the piece all in black, a sociopath with no redeeming features and all the staying power of a tabloid headline'.

In the same vein under the title 'Why are the heroes always white', Jordon (1997 p. 1) poses several challenging questions to the theme of everything white being good and black is viewed as a challenging colour:

> Why are white lies good and black lies evil? Why are black actors relegated overwhelmingly to "buddy" roles in movies and never get the (a) girl or (b) boy, depending upon your orientation, and are left to look like happy eunuchs? Why are athletes said to have a "work ethic" and black athletes called "naturals"? Why are white serial killers "troubled" and black murderers "beasts"?

How I felt back in my formative years on the origin of racist thought meant little to those around me as the harsh reality for all us Yumba kids was that white kids had options: of being driven to school by their mothers, ride a bike or walk in comfortable shoes with socks. Aboriginal kids' only mode of transportation to and from school was by foot at a steady pace and done so without shoes. I certainly noticed the difference in summer when the 45-degree Celsius heat made walking to school without any footwear almost impossible. We managed by walking on grass and other

green vegetation. If the southwesterly winds blew a gale the green grass quickly dried and turned prickly, the journey bare foot became a little more burdensome.

The white kids had hard plastic lunch boxes with a daily content list including meat and salad sandwiches, nuts and a variety of fruits plus an iced plastic water bottle. The Aboriginal kids had vegemite or golden syrup sandwiches folded loosely in a page of a newspaper.

Of course there were poor white kids at school who were devoid of the essential nourishment and comfortable clothing that the majority of white kids took for granted. Shirley (2010 p. 35) on identifying Whiteness of poor whites said: 'Differentiating the variations in whiteness does not deny the privilege that comes with just "being white," but rather recognizes that those privileges may vary among whites based on a complex set of interconnecting social factors'. Most of the poor white kids shared the Yumba kid's food and preferred our company to the richer white kids during recess. But after school the white kids, rich and poor, walked in opposite directions to black kids to their respective homes.

There were some paternalistic teachers within the school system who broke the hearts of many Aboriginal children who dared to dream of a better life after school away from Cunnamulla. Inappropriate comments by these narrow minded teachers, to the effect that we would never amount to anything of importance – in obvious reference to careers as stockmen or domestic servants like our parents – was destabilizing at a time when we felt in need of reassurance. Personally, I felt the contribution of my parents and the thousands of other Aborigines in the sheep and cattle industry (May 1994) in their era was instrumental in the nation realizing its wealth potential.

The good teachers far outnumbered the bad teachers at my school. However, all my teachers had not been to the Yumba and did not have any idea of our living conditions. For instance we had no electricity in our homes and yet we were given exercises to do at night. There was a teacher who chastised me because I did not complete the task of drawing a picture of my bathroom. I could not complete the assigned task because my parents did not have a bathroom in their humble fringe camp abode and I had never seen or used a bathroom elsewhere. Another primary

school teacher left me scratching my head in total bewilderment at an instruction to draw pictures of creatures from the ocean. My longest journey in life was from the camp to school and back. I felt dumb, as I could not complete the exercise because I had no idea of what the ocean was or what animals lived in it. I did not own a book about the ocean and both the school and public library, in the main street of town, discouraged children living on the Yumba from borrowing books. Perhaps the librarians believed black children had no interest in reading or their motives were not honorable. Sadly my school experience did not fit the utopian aspiration of eminent Aboriginal educator, Dr Chris Sarra (2012 p. 29), who placed emphasis on the school culture that 'had to be intent on nurturing a positive sense of (Aboriginal) student and cultural identity as well as high expectations about student learning'.

Vaught and Castagno (2008 p. 96) contend: 'Whiteness as property is a concept that reflects the conflation of Whiteness with the exclusive rights to freedom, to the enjoyment of certain privileges, and to the ability to draw advantage from these rights.' Evidently white kids in my classes at school drew on their Whiteness advantage by accessing, without challenge from librarians, additional resources from the school or public libraries to complete homework tasks. Meanwhile, I had to make do with resources of minimalist proportions from class notes or broader knowledge from my parents at home on the same assessments.

When I walked home from school I paid particular attention to the physical polarity in the houses that we Yumba kids lived in compared to the white kids who were in the same class. I do remember as a youngster frantically searching for discarded newspaper, cardboard or chewing gum, when it rained, to place in cracks of our galvanized tin roof and walls of our home. Of course all fringe dwellers living on the Yumba salvaged these prized possessions, which formed walls and roofs of our homes, from the rubbish tip. If the rain came during the night without warning it would blow in through the holes made by the 2cm long nails from the used galvanized tin sheeting.

Our dining table, in a separate standalone structure, acted as our pantry and the wooden legs were placed in a couple of centimeters of water in disused Golden Syrup tins to prevent ants from climbing up and feasting on our limited grocery supplies.

Refrigeration was almost non-existent on the Yumba and any perishables had to be consumed on the same day of purchase. There were one or two families who invested in a charcoal cooler (Hagan 2005). Cooked meat and butter were kept in a damp tea towel in a dish on the dinner table. Tin meat and tin food in general were the order of the day and Mum would stock up on those items when Dad got paid, if home, or when money was couriered to her from his workplace when he was away.

Unfortunately discrimination, in all its racist practices, was a daily occurrence for Aboriginal people from the Yumba. It was not until I was much older that I realized the thick ropes on the front and to the left side of the cinema was not a marked area that my people found comfortable seating in but rather a visible demarcation line; a tangible reminder on where influential whites thought our place was in the bigger scheme of things. Where the roped area ceased the proprietor had large reserved seating slips on every seat from that point backwards. One dared not sit past the roped area in fear of being barred from ever attending the most popular pastime in the town of going to the movies.

All the time I thought walking down the dark uncovered side entrance, occasionally getting saturated in a sudden rain shower while white patrons, including my white schoolmates, walked in a covered air-conditioned entrance with beautiful décor, was a choice thing. On reflection I contribute that ignorance to my youthful innocence but now know that 'While being white is related to an individual's identity, Whiteness is an institutionalized system of power and privilege that benefits Whites' (Endres and Gould 2009 p. 424) and which facilitates the segregation at the cinema of my white friends from me without them viewing it as a morally wrong act.

TV personality, Ray Martin, (2009) who discovered his Aboriginal heritage to the Kamilaroi Nation later in life made pertinent observations from his privileged position of whiteness (Frankenberg 1993, Moreton-Robinson 2000) – where he looked, sounded and acted white (Carlson 2015) – of Aboriginal people he observed from the safety of a convenient white life his family chose to live whilst denying a matrilineal lineage:

> On our travels we inevitably regrouped at Grandma's place in Gunnedah, where the blackfella camp was a no-go zone on the other side of the Namoi River. Parts of the town were still segregated when I was growing up; the Aboriginal women and kids had to sit down the front at the picture show. Black kids were expected to shower before they were allowed into the town's swimming pool. They were shocking, racist times (p. 8).

Veiled whiteness offers people of fair to white complexion with pronounced European appearance a window of opportunity to view inwards at the conduct of unsuspecting associates as they share in aligned benefits of feeling and being accepted as white and conversely looked outwards to appraise the disadvantaged 'Other' as they continued to endure life on an uneven playing field. All the while veiled whiteness of light skinned First Nations People can continue to enjoy an unlimited quota of subliminal benefits that Peggy McIntosh (1988) credits as 'an invisible package of unearned assets which I can count on cashing in each day, but about which I was "meant" to remain oblivious' (p. 1), provided the convenient concealment of their Indigenous ancestry is not imperiled through disclosure. On the other side of the coin, wanting to openly identify with her Aboriginal lineage, as a person of white complexion, proved problematic for Aboriginal scholar, Dr Sandy O'Sullivan (cited in Hodge 2015 p. 218), who was challenged on the subject by her lecturer at university:

> So when, early on in my degree, I mentioned to one of my lecturers – a non-Indigenous academic who had worked in remote communities – that I was Aboriginal, she took me aside and explained that I should be very careful about saying that, because it could be very offensive to Aboriginal people.

Just like television personality Ray Martin who learnt of his ancestral links to First Nations People later in life so too did Olympic swimmer Samantha Riley's mother. Lin Riley (2001 p. 19) said, as an adopted child, that there was a strong need to know about her roots: 'I'd always had a feeling of being lost and something I couldn't touch but only describe as a feeling of incompleteness.'

Whilst the stories of late discovery of traditional lineage for the Ray Martin's and Lin Riley's of the world are sad and regrettable, they did however escape the palpable bigotry directed at people with a darker appearance of similar cultural roots in communities they lived in. Callaway (2004), author of the biography of internationally acclaimed jockey Richard 'Darby' McCarthy in *Darby McCarthy Against All Odds* – Cunnamulla's most famous person, black or white – wrote of an interview journalist Julianne Schultz from the *Nation Review* did on Cunnamulla when she labeled it the place where the:

> Vehemence of the racial hatred compounded with the complexity of a dying town. Rumour had it that Cunnamulla was a frontier town of appalling race relations. The man next to me on the plane confirmed my suspicions. "If you're staying at the Club hotel you'll be okay. They don't let the darkies in", he said (p. 5).

This was the backdrop of normalized Whiteness in racist Cunnamulla where my father was aware that he exercised limited influence over his white counterparts, yet battled to work with them to improve the lives of his growing family the best way he could. On the other side of the sand hill demarcation line Dad's white counterparts had all the power in the world and exercised 'power not so much by exercising their capacity to harm non-white people but by exercising the privileges that hundreds of years of racism have put in place for them' (McWhorter 2005 p. 545). My pre-teenage years were remarkable for the naivety I displayed towards overt racism I saw, smelt and touched. However, the rapid change in my thinking on all things racial as I fast approached my thirteenth birthday was rousing and augured well for the challenges head.

2.7.1 Stephen Hagan – The teenager

On the day we moved into our new purpose-built three-bedroom house with electric stove, fridge, bath with hot water, laundry with washing machine, flushing toilet and patio – to mention a few firsts for our family – I knew that my Dad was special. I also prayed that other fathers from the Yumba would follow in Dad's footsteps and buy a house in town for their families. That aspirational goal I had back then for my people

to share equally in the benefits of what white people accepted as ‘normal’ lifestyle choices, I still hold dear today. It is because the black ‘normal’ is so far removed from what white people call ‘normal’ or ‘commonplace’ is the genesis of my strong public advocacy for equality of the races today.

Our Bedford Street address was opposite the sand hill and across the road from the Caravan Park. I always knew that if things went pear-shaped for me in town with white kids my age not wanting to mix with or accept me for what I was, I could easily walk over the sand hill in under 15 minutes to play with all my relatives and friends.

Material things, like bikes and footballs my new white friends had, occupied my thoughts as a youngster and were on my unwritten ‘must have’ list. However I overcame the pursuit of material possession as I grew older and began to adopt a social perspective of my new environment made possible by the audaciousness of my father whose dreams for his growing family extended beyond the margins created by white folk.

As an Aboriginal youth growing up in the country I felt the negative vibes from older white people when they saw me talking to white girls outside the school boundary after hours, or sharing a ride on a bike (doubling) to or from school with a white boy. I was cognizant of the fact I could not sit with a white boy or girl at the local cinema through segregated rules of the racist proprietor, but I sure was not going to succumb to the palpable whiteness stares of contempt by redneck adults away from public premises. When discussing early life in Cunnamulla with my white school friends later in life they feigned knowledge on the subject of the segregated cinema. ‘Never occurred to me at the time’ or ‘I didn’t think old Corsie (cinema proprietor) was like that’ were words that gave credence to the normalization of whiteness.

It also disturbed me that my beautiful mother could not try on a dress in the fashion shop or a pair of shoes as white women did at the same place. Mum, like all Aboriginal women had to purchase items they sought by sight only. One could only envisage the reason for such unwritten rules was that ‘imagined’ germs could be passed on to decent clean white women should Mum and other Aboriginal women not purchase the item tried on for size because of an uncomplimentary fit.

I recalled my first physical tussle was with a white boy one year ahead of me when I was in year 9. He called me a '*black nigger*' in the music room. I instinctively lashed out at him and to my surprise he did not retaliate. To my astonishment he then continued on with his vitriol by saying '*You're blacker than the ace of spades*'. I could not comprehend, at that time, why this person who was obviously conceding defeat still insisted on demeaning me with his racist tongue. Being more of a conscientious objector than a fighter I chose to walk away from a potentially explosive scene thus preventing further embarrassment to both of us. I was not proud of what I had done to the older boy as a response to his provocation back then and to this day I still view it as an indelible scar on my exemplary record of practicing non-violence as a general rule when faced with adversity. Would I have been physical towards him if he had called me dumb, backward, slow or ugly? In hindsight, perhaps my response to being called 'nigger' was proportionate to the loathing I have for that word when used to demean people of colour, even at my tender age without a history of violence to speak of?

On completing the highest grade on offer at Cunnamulla State High, I applied for and was successful with an application to attend a private boy's boarding school in Brisbane, 800 kilometres east of Cunnamulla to undertake Years 11 and 12. I had no idea how I would fit in at an exclusive private boarding school in the city but I viewed the move in a positive light. I figured if Dad could manage the daunting transition over the sand hill from the Yumba to town with his wife and young children in times when pervasive racism was the norm, I was certainly up to the challenge of conquering the unknown in a city where people worked day and night and the magnificence of silence – in the tranquility of the night – is never fully appreciated.

2.7.2 Stephen Hagan: private school

To say entering the world of an exclusive boy's boarding school in Brisbane was a culture shock is an understatement. Marist Brothers College had over a 1000 students, half of which were boarders from all parts of Queensland as well as other states and international. The strict adherence to dress code, especially the formality of wearing a tie in winter that presented an outward collegial feel of oneness, was, in reality, quite

deceiving as the subliminal stench of racism was not dissimilar to what was a perceptible norm in my home town.

Most of the non-white students at the impressive private school, occupying the vantage point on the highest hill in the leafy outer Brisbane suburb of Ashgrove, survived their years at that school by simply ignoring the ugly barbs of xenophobia and acting like it never happened. Unfortunately, and to my detriment at times, the word acquiescence was not part of my vocabulary then or at any time into the future.

On a Year 11 camping trip to a known mountain retreat near the Gold Coast I was placed with another boy in a two man tent, like all the other students, but instead of waking up beside him I found his side of the smallish tent bare. It was an extremely cold night and the date of the trip was strategically planned as such by the school to test the character of young men under trying conditions. It was not until later that day when the query I had in my head was resolved once I overheard other boys joking that my allotted room-mate chose to leave my tent because 'he didn't want to share it with an Abo'. I confronted the young man in question to verify the gossip doing the rounds and he denied it with a response that 'some of the other lads had smuggled in cigarettes and I didn't want to get you in trouble by bringing them into the tent'. The explanation sounded plausible but I did not buy it. However, I knew my assertive questioning had the desired effect of relaying my dissatisfaction without the need to advance the precariousness of the matter further.

I was not gifted academically – mid level in most classes at best – but did well in sport representing the school in the 2nd XI in cricket and the 1st XV in rugby union as well as making the senior squad in athletics and basketball. I also ran in the relay team for my school when Queen Elizabeth II officially opened QEII in Brisbane in the lead up to the 1982 Commonwealth Games.

Those insecure boys that I encountered during Years 11 and 12 would most likely have continued their bigoted outlook in life post-Marist College years by spreading their odious message of racial intolerance to family, friends and associates and worst of all, to their children. At that level whiteness is by far the greatest winner, through the nurturing process from those young men to their children – the next generation of

potential xenophobes – who will accumulate subliminal hereditary white privileges into their 'invisible knapsack' (McIntosh 1988).

When some of the old boys from my private school years have caught up with me later in life they often make the comment that they enjoyed reading my biography *The N Word: One Man's Stand* (Hagan 2005) but did not know I had felt that way about some of them on the issue of race; a case of déjà vu as was the case with my former Cunnamulla friends from my primary school years who also expressed similar sentiments. But that is precisely the point of whiteness that they just did not get: For those unearned privileges to be 'cashed in' at societal level there must be subliminal social structures that recognise and offer a place of vantage (McIntosh 1988, Frankenberg 1993, Leonardo 2005).

Whiteness is the enabler that prevented my old school friends from seeing the forest for the trees even though it was omnipresent back then and still ubiquitous today. They, oblivious of their actions at the time, offered racially intolerant classmates a place of vantage (Frankenberg 1993) by condoning their racist jokes and innuendos of non-white people broadly and those at their school specifically during casual conversation in the dining room, class room, during recess, on the cricket and footy fields, in the school bus on the way to and from an event and in whispered tones across beds to each other when the lights went out in the dorms at boarding school. Fortunately, not all white students from my boarding school years had an overtly racist disposition. The good white students – whom I am still in contact with today – made my two years at Marist College Ashgrove tolerable and enlightened me on the ways of middle and upper class Australia in the same manner I believe I provided cultural education to them on Aboriginal Australia. In fact one of my classmates was my barrister in several civil cases I was involved in both as an applicant as well as a respondent. Having said that, I do believe my barrister friend, as is the case of all my white friends back then and those I call a friend today, are, as Garner (2016 p. 23) asserts, informed and shaped by whiteness; 'the universal standard against which everything else is measured'.

It was not until 2012 that I read in the Marist College Ashgrove Annual Report (2012 p. 8) of my contemporary standing with other alumni in the prestigious school some

34 years after I graduated, under the heading *Notable Past Students*, along with Prime Ministers, judges and sporting greats:

> Bishop Brian Heenan; Bishop James Foley; Sir Julius Chan, former Prime Minister of Papua New Guinea; Hon Kevin Rudd, Prime Minister of Australia; former Wallabies Des Connor and John Eales; cricketer Matthew Hayden; Miles Franklin Award winner, Andrew McGahan, novelist Michael Gerard Bauer and author and historian Humphrey McQueen; Judge Kerry O'Brien; actor Ray Meagher; trade unionist Bill Ludwig; academic and Aboriginal activist Stephen Hagan; outstanding teacher and former College Captain, Denis Callaghan.

My first two years living away from my family for the first time was an opportunity I embraced and which shaped my contemporary standing as a confident First Nations young man who appreciated and thrived in challenges offered up by mainstream life dominated and influenced by proponents of whiteness.

2.7.3 Stephen Hagan: new horizons

After completing my studies at Marist Brothers College in 1977 I took a gap year off from pursuing further studies to travel around Australia where I viewed abject poverty of my people on the streets. It was a rude awakening for me especially during the three months of doing casual work in rural South Australia, in and around Alice Springs and other Northern Territory towns en route to my destination, Darwin. Although people lived rough and endured extreme hardship in my hometown of Cunnamulla, their public display of unruly street behavior however, was not apparent as relatives or friends would intervene early and take those doing it tough back to the Yumba to be fed and cared for.

Images of heavily intoxicated people drinking and sleeping in the center of most towns are scenes indelibly imprinted in my mind. I had not previously witnessed that level of harrowing living conditions that clearly locals in those towns, black and white, saw as a normal way of life for those less fortunate. It does not take a genius to work out those doing it tough were displaced Traditional Owners who were forcefully

moved off their country into foreign towns and cities to make way for pastoral, agricultural or mining interests.

After an eye opening gap year of being immersed in the social nuances of Australia up close and personal I commenced a primary school teaching diploma at Townsville College of Advanced Education for several years. It was during my time there that I undertook my first trip abroad when, at the invitation of Mahatma Ghandi's grandson, Rajmohan Ghandi (Gandhi 1995, Gandhi 2005), son of Devdas Gandhi, I spoke at a conference and toured most of India. The experience of meeting with and talking to Mother Teresa in Calcutta as well as doing some voluntary work for her Order of the Missionaries of Charity for the Calcutta's most destitute allowed me to view my personal angst of my peoples' marginalization at home in a different light.

Besides being overwhelmed by the new experience of seeing black people flying planes and functioning at all levels of business and politics I also got to see the depth of poverty, misery and despair. What that visit to the most populous democracy in the world did for me however, was strengthen my resolve to fight against injustice at every opportunity. The visit to India in many ways proved the catalyst for this dissertation as it stirred a passion deep within to want to make a difference on this front in the noblest of professions.

After studies in Townsville I applied for and was successful with an application for work in Indigenous Affairs in Canberra. The work was rewarding and the pay was pleasing. The only difference then to the years living in boarding schools or a residential college at university was the marvel of choice money provided.

Despite my carefree lifestyle enjoyed in the nation's capital I was conscious of the ever present dangers that befalls any young Indigenous public servant starting out in life such as discrimination in the housing and apartment rentals area, in buying a car, in interviews for jobs and in normal daily acts of flagging a taxi or standing in line to be served at a department store or food outlet. I did what ambitious Indigenous men and women did then, and still do today, I worked out ways to mitigate the racial element of those transactions by being assertive and self-assured: money speaks all languages. It is hard however, trying to demonstrate those traits when a taxi driver

will not stop for you because of your appearance and the representation of that specific look to them. MacMullan (2009 p. 15) contends that in order for white people to fully divest themselves from white privilege, 'we need to follow the primary task of uprooting the weeds of racism with the equally important task of sowing the seeds of new crops'. That profound statement is much easier to say than act out in real life.

Somehow I managed to progress through life with my discernible handicap of race in much the same manner as my father. During the same period Dad achieved popular accolades he deserved when elected to represent his people nationally on the National Aboriginal Consultative Committee under the leadership of Gough Whitlam and the National Aboriginal Conference under Malcolm Fraser's administration (Hagan 2005). Dad's remarkable tenacity to challenge himself and those around him saw success of unimagined political and social scale throughout the peak of his 40s and 50s. He became the first elected Indigenous Australian to speak at the United Nations in Geneva in 1980 and received the Order of Australia in the same year in recognition of his contribution to Indigenous affairs, to name just a few of his achievements (Hagan 2005). Unlike many Indigenous men his age who worked all their lives with nothing to show on retirement, Dad also became comfortable with enjoyments of the fruits of prudent financial investment through home ownership and a portfolio of other impressive assets acquired along the way. If any of his children sought a role model, they need not look any further than the person who caste a huge and protective shadow over them throughout our lives: our Dad.

My Mum and Dad were great role models with exemplary parenting skills as demonstrated by the success of their children in society today and that of their grandchildren and great grandchildren. But sadly not all Indigenous children from the Yumba in Cunnamulla during my time living there, or any part of the nation for that matter, can attest to a life of opportunities the consequence of which can be attributed to their parent's hard work and ingenuity. Weatherburn (2014 p. 117) succinctly attributes the cumulative effects of colonization on poor parenting skills for many First Nations People when he wrote:

> You cannot colonise a country, dispossess the original inhabitants of their land, destroy their traditional way of life, herd them into camps, remove large

numbers of their children, put large numbers of their parents into prison and expect to find the parenting process unaffected.

There are many white children who also start out in life with huge handicaps because of poor nurturing skills of their parents. Despite their unique circumstances that caused their personal dysfunction, they do however, enjoy the benefits of being part of the white race, of enjoying the benefits of whiteness (Frankenberg 1993, Moreton-Robinson 2000) where doors spontaneously open or stay ajar for them on approach that in the main stay closed or are difficult to open for Indigenous Australians.

The barriers of entry into the white world of opportunity for First Nations People are multifaceted in nature and premised around constantly reconstructed paradigms to suit the prevailing whiteness mood of the dominant population. Levine-Rasky (2013 p. 4) identifies whiteness in the same vein as being 'primarily about the exercise of power, often practiced subtly or obliquely, but always with the effect of its construction – and exclusion – of difference'. I know this, as do all Indigenous people who try to work within the constantly changing social, economic and political landscapes where the goal posts are manipulated by white people to our detriment. Wielding control over blacks is the ultimate aphrodisiac for a narcissistic white person immersed in whiteness and lusting for greater power.

2.8 The allure of political influence

After the routine of daily life working in a variety of jobs in the public sector in the nation's capital for over a decade I accepted an offer to work in Aboriginal affairs in Cairns, far north Queensland. This new opportunity presented many challenges – working in the coalface as opposed to designing policy that affect lives in isolation in Canberra – and rewards. Personal fulfilment in doing something meaningful for First Nations People and receiving satisfaction by witnessing tangible results first hand is a joy only those working in the field can appreciate.

By far the most significant outcome of voluntarily relocating to Cairns for work was meeting Mamu Traditional Owner, Rhonda Appo, whilst on a work assignment to Innisfail an hour's drive south of my work base. That bond developed with the

medical administrator past the casual acquaintance phase and took on a whole new dimension when we married in Cairns in 1991 (Hagan 2005). The birth of our son Stephen Jnr, in 1992, and daughter Jayde in 1995 are the only things that would be comparable to the emotional euphoria I celebrated on our wedding day with family, friends and close associates.

Now into my 30s I thought I was conversant in all things immersed in, or masquerading as, whiteness that could trick me up or pose a personal danger to my family. That was until I got myself directly involved in politics.

During my term of employment with respected Indigenous political advocate Mick Miller (Horton and Australian Institute of Aboriginal and Torres Strait Islander Studies. 1994) as the Administrator of the Aboriginal and Torres Strait Islander State Tripartite Forum (STF) based in Cairns, I became aware of the immense political clout he had developed over many decades. Mick was appointed to head the State Tripartite Forum by the Goss Labor government in Queensland to advise the Health Minister on Indigenous health issues. I was working for the Aboriginal and Torres Strait Islander Commission (ATSIC) when Mick invited me to join his office.

It appeared that every state or federal politician that came to, or passed through Cairns rang Mick or visited him in his office. Politicians sought time with Mick to have lunch or dinner to gain his perspective on Indigenous matters locally and nationally. Despite his perceived influence with politicians, Mick was conscious of the snail pace adopted by their respective State and Federal bureaucracies on all recommendations he was putting forward to aid his people who suffer the most atrocious health conditions (Divakaran-Brown 1987) of all Australians. It was during an invited visit to Goondiwindi on the Queensland and New South Wales border that we devised a strategy that would have serious political ramifications for the office of the State Tripartite Forum and lead us personally into a downward spiral that we were unable to pull back from. After meetings with Toomelah community leaders (Einfeld 2012) and Aboriginal Community Health Centre workers, Mick tried to coordinate bilateral talks between the Ministers of Health for Queensland, Peter Beattie (Williams 2005) and his counterpart in New South Wales, Dr. Andrew Refshauge (Pearlman 2005).

Local Aboriginal leaders advised Mick that there was a lot of racism displayed towards members of their community who required medical assistance from staff of nearby Goondiwindi Hospital. They claimed the resentment stemmed from hospital staff that begrudged doing ambulance call-outs to Boggabilla and Toomelah missions on the New South Wales side of the state border. Clearly the passing of time in the hospital system has not changed much from a couple of decades earlier when internationally renowned Aboriginal advocate and highly decorated nurse, Professor Gracelyn Smallwood (2011 p. 62), expressed her frustrations at racist attitudes of Queensland health officials:

> While working as a nurse, there was an unwritten rule that Health Workers in the Aboriginal Health program for Queensland Health were required to tie a piece of string around the tea and coffee mugs. That was to ensure that white nurses would not have to share a mug with the Aboriginal Health Workers and run the risk of contamination. I mention this, because it was just one of the many small petty ways in which we were reminded of our inferior status and of the barriers that still lay in our way.

Apparently hospital staff felt they were spending an inordinate amount of Queensland Health money on what they viewed as primarily a New South Wales problem, and a black one at that. Mick tried going through the usual channels to bring the message from those frustrated Indigenous leaders living in the border communities to Queensland Health Minister, Peter Beattie. Mick was most disappointed that he could not achieve a simple task of coordinating a meeting of both Ministers and blamed them for failing to respond to his personal calls and additionally proportioned blame on their gate keepers, both Indigenous and non-Indigenous. Exasperated with having to jump through hoops to get to Minister Beattie, Mick decided he would take up the Boggabilla/Toomelah issue with Mike Horan (Davies 2013), the Queensland Opposition spokesperson for Health, and see if he could gain results through that process.

On Monday November 20 1995 Mick, Victor Jose and my brother Lawrence and myself met with Horan in his electorate office in Ruthven Street, Toowoomba. My younger brother Lawrence, who was living in Toowoomba at the time, came along as

our guest and observer. Horan appeared to be delighted to receive us in his smallish ground floor office in an arcade opposite the Toowoomba City Council's impressive sandstone building. After agreeing on a course of action to address the border issue Horan, forever the consummate politician, asked if there were other issues that we would like him to follow up on. Mick, equally at home playing politics, volunteered the urgency to expand the operations of the STF. He specifically requested a significant injection of funds into our operations in order for him to address the appalling health statistics of Indigenous Queenslanders. Horan concluded the meeting in a very jovial mood and suggested we meet again soon and left us with a thought he had of forming a partnership between the Coalition Government and the STF. We knew what he was talking about as he had already touched on the issue of the upcoming Mundingburra by-election during our meeting. The outcome of a court challenge that precipitated a by-election would determine the government of Queensland, as described by Green (2015) years later:

> At the 1995 election, the failure of Green voters to direct preferences to Labor saw sitting MP Ken Davies win by only 16 votes, a margin never likely to withstand a court challenge. The government appointed Davies to the Ministry, but the Court of Disputed Returns later overturned his victory and ordered a fresh election.

That night over a few drinks at the Toowoomba City Golf Club Mick raised the prospect, previously unheard of as far as we collectively were concerned, of forming an alliance with the conservative Coalition Party in Queensland. We initially expressed reservation in this course of action given the disastrous historical record their party had on Indigenous issues under the long reign of the ultra-conservative Joh Bjelke-Petersen's administration (Callinan 2014).

Within the following week the telephone at the STF was running hot with calls initially coming from Horan and then Kev Lingard (Wardill 2007), opposition spokesperson on Aboriginal and Torres Strait Islanders Affairs. These persistent politicians made it very clear the jewel in the crown, the seat of Mundingburra, would soon be contested in a by-election. The government knew and we knew that there was a large Torres Strait Islander population in the seat of Mundingburra, who in all

probability did not caste votes in any significant numbers at the last state election. The general consensus was that if our group could convince them, as well as an appreciable number of Aboriginal voters, to vote this time around for their pre-selected member, Frank Tanti (Catriona 2001), then the numbers in Parliament would be tied up. There was a strong view within the Coalition ranks that Independent members of parliament: Liz Cunningham (Winter 2015) and Peter Wellington (Hoffman 2010), former national party supporters, would come on line with some gentle persuasion: pork barrelling (Mason 2015). If that prediction came to fruition then government in Queensland would change.

We knew we were playing for big dollars as our office soon became a regular meeting place for coffee with local conservative politicians Naomi Wilson, National Party member for the seat of Mulgrave and Lyn Warrick, Liberal Party member for the seat of Barron River (Hagan 2005). Federal candidate for the seat of Leichardt, Warren Enstch (Hagan 2005) was another political aspirant who frequented our office to socialise and give the impression he was supportive of our ambitions. There was a lot at stake and the amount of attention and promises we were receiving from the right side of politics rose exponentially as we got closer to the by-election and left us in no doubt that we were squarely in the driver's seat.

On January 17, 1996 Mick and I drove the four hours south from Cairns, along the Bruce Highway through Innisfail, Tully, Cardwell, and Ingham to meet Horan's flight at the Townsville Airport. It was strange watching a customarily unflappable Mick search the transit lounge and wide walkways leading to boutique shops and eateries for any sign of his many Labor friends who might happen to come across.

It was with relief and a touch of trepidation that we both greeted Horan on that sun-drenched afternoon in humid Townsville. After collecting his luggage we drove him to the Banjo Paterson Motel where he was to set up camp for the duration of his visit; a prime motel on the city's western suburbs. A couple of hours later Mick and I collected Horan from his motel and set off to dinner at the renowned Ming Dynasty Chinese Restaurant in the city to meet another significant player in this high stakes political game: the deputy leader of the National Party, Kev Lingard. Amidst the elegant oriental décor of the Ming Dynasty Chinese Restaurant the beginning of an

extravagant plot to seize ultimate power in Queensland, with a rising population of three million people, was in progress with great enthusiasm.

It did not take long for Mick and myself to hit it off with Lingard; a jovial extroverted man who enjoyed an alcoholic beverage, or two. Mick, who also enjoyed a drink, was in his element and those two gelled like long lost friends. Horan was the opposite of Lingard; reserved and somewhat introverted. After an hour into the feast Horan started to raise the subject of the upcoming election and searched for something to write on. On locating an unused paper table napkin he asked me to write down for him the points the STF sought confirmation on as part of the partnership previously discussed. Lingard tried not to make the occasion too formal and proceeded to order more drinks and continued to engage in small talk with Mick.

On the way to Townsville from Cairns Mick and I had already developed a strategy for the meeting as well as reflecting on the predicament we were in by aligning with the conservative government. Mick thought Peter Beattie was too busy to talk to him, as he was trying to make up for lost ground after years of being placed in purgatory by Premier Wayne Goss (Tracey 2014), who previously viewed him as a threat to his top job, than to listen to the STF to try and improve the status of Aboriginal health. The deal we thought would be best for the STF was to enter into a partnership with Queensland Health and the Aboriginal Coordinating Council (ACC) (Crisp 1994) to develop ongoing health policies by expanding the STF to six offices to ensure Aboriginal health programmes were successfully undertaken state-wide.

As we entered our second hour at the popular Ming Dynasty Chinese Restaurant Lingard, showing signs of being a little intoxicated, recommended we adjourn to the Townsville Breakwater Casino (Kelly 1996) for a look around. We did not know it at the time but our new friend Lingard had a predisposition for gambling, especially on the two-up floor on that particular occasion. Conversely, Horan did not partake in gambling and chose instead to prop himself up at the bar and sip slowly on his beer whilst waiting patiently for Lingard. That task proved a fruitless exercise as I organised transport to his motel in the early hours of the morning whilst his parliamentary colleague continued to watch two-up coins flip end on end before finally showing a result when they came to rest on the floor.

The following day, after a late night at the Casino, Lingard caught up with Joan Sheldon (Anderson 1996), Deputy Opposition leader and leader of the Liberal Party, and together they held a joint press conference outside the Townsville Base Hospital with Mick. Horan and I stood off to their left. The Deputy Opposition leader reiterated the same promises agreed upon by her parliamentary colleagues with Mick and myself at the Ming Dynasty Chinese Restaurant the night prior. I felt awkward standing with the conservative politicians and I noticed several experienced media representatives offering more than a cursory glance at us, especially at Mick who was a noted national champion of the Indigenous cause. Mick commented to the media that he was pleased to hear the Coalition's new policy direction on Indigenous Health and was confident they would deliver on their promise. The advantage of the media interview was that Mick had made public STF's views on the opposition party's policy.

Soon after the Townsville meeting Horan flew to Cairns and invited me to attend a breakfast address at the Pacific International Hotel by the Deputy Prime Minister, Tim Fisher. I did not feel at all comfortable at that 'right' leaning political gathering. Just when I thought I would not be part of a Coalition Party fundraiser again I found yet another invitation on my desk to the best show in town: lunch with the Prime Minister, John Howard. Mick and myself attended a special Liberal Party lunch at the Cairns International Hotel, in which the Prime Minister delivered the keynote address. The lunch was to launch Warren Entsch's campaign for the upcoming federal elections. This fundraising was on a much grander scale than the one I attended for Howard's deputy, with in excess of four hundred people in attendance.

We were seated at the event with the senior press secretary to the Prime Minister, Chris O'Mealy. After the official part of the function had concluded Warren Entsch organised a photograph with the Prime Minister, himself, Mick and me, for the *Courier Mail* newspaper. Within a week Chris O'Mealy was on the phone every other day to the STF office asking me if I could introduce him to an Indigenous person living in Melbourne who would be prepared to go public against criticism the Prime Minister was receiving from certain sections of the Indigenous leadership, namely the Dodson brothers, Mick and Patrick. The Melbourne call for help would be followed

by a similar call in Sydney soon after requesting names of Indigenous people who supported the Liberal Party who could contradict criticism from Indigenous leaders of the Prime Minister and his handling of the Indigenous Affairs portfolio. I soon became intolerant of the calls from O'Mealy and asked him, the next time he rang, if his government had a register of Indigenous people who were card-carrying members of the Liberal Party. I advised him that he would be best served by contacting people on that list to counter any criticism of his beloved Prime Minister. He told me he was not aware of such a list and asked if I could assist in putting one together. I spoke to Mick about this and he said he would be surprised if many Indigenous people would be courageous enough to admit to voting for the Liberal Party. To his knowledge he was not aware of many high profile Indigenous people who openly supported the Liberal Party.

On 31 January I accompanied Victor Jose and Torres Strait Islander leader Jim Akee to Townsville from Cairns to continue our campaigning for the Coalition Party in the lead up to the Mundingburra by-elections. When we arrived in Townsville we drove to the Nathan Village Shopping Centre to listen to Bob Katter (Ferguson 2013), then Federal National Party Member for Kennedy, and local Liberal Party candidate Frank Tanti make their public addresses. It was the first time we were introduced to Tanti, the diminutive political aspirant. We met Joan Sheldon and her personal adviser Cameron Thompson (Thompson 2011), who later stood for and won the federal seat of Blair. Thompson said Tanti's election campaign office was available to us during our visits to Townsville and we were welcome to use the office resources at any time. He introduced us to the Liberal Party support staff and made it clear to them who we were and informed them that we be given access to the wherewithal of the campaign office at any time.

After both spirited speeches were completed to a soft round of applause, maverick MP Bob Katter, invited Akee, Jose and myself to have drinks with him in the first floor bar at the Hotel Townsville to discuss our role in the Mundingburra by-election. Katter asked our group how we were placed with funds for our role in helping the campaign and we replied that the Coalition had not given us a cent. Without blinking an eye he made a call to George Price (Hagan 2005), Senior Vice President of the National Party, and explained our predicament and suggested he deposit money into

Victor Jose's nominated bank account to assist him with some relief money to entertain Indigenous people in Mundingburra discreetly on behalf of the Coalition government.

Within the hour Jose walked from the Hotel Townsville through the Flinders Street Mall to a Suncorp Bank ATM and withdrew significant funds that Price had deposited into his account for campaign purposes. Jose returned and casual as ever thanked Katter for the directive to the Senior Vice President and said he would not be disappointed with our efforts. Later that afternoon we drove Jim Akee to the Banjo Paterson Motel where he informed the owner that Mike Horan would cover the bill. The owner told Jim that Horan had rung through earlier from Brisbane and confirmed the arrangements to cover accommodation and meals.

The following day Jose, Akee and I had breakfast with Opposition Leader Rob Borbidge and Liberal staffer Cameron Thompson to discuss our campaign strategies to date with the Indigenous population, in particular the large Torres Strait Islander population living in the electorate. Borbidge spent an hour talking about a range of issues including our partnership agreement previously worked out with Horan and Lingard at the Ming Dynasty Chinese Restaurant and confirmed by his deputy, Joan Sheldon, at a press conference the following day. There was nothing secretive about the meeting with Borbidge as it was held in the ground floor eatery of the Lowths Hotel with views to the Flinders Street Mall. Borbidge seemed quite relaxed and made mention of the critical role we were playing in the campaign and believed any increase in Indigenous voter numbers on the day would change the outcome of the election and effectively the government of the State.

We discussed briefly the mode of transportation available for Indigenous constituents to cast their vote at the Mundingburra Primary School and if they required us to hand out how-to-vote cards in front of the polling booth. Borbidge, conscious not to offend us, said it might be awkward for non-Indigenous people to receive how to vote cards from Indigenous volunteers. He suggested an alternative arrangement for the Indigenous voter to receive their how-to-vote card was for us to hand out to 'your people' on the bus or at their homes prior to visiting the polling booth. Borbidge's remark – as subtle as a flying brick – was confirming to us that 'whites have largely

retained the ability to formally and informally exclude people of color from white networks' (Bracey 2016 p. 13) whenever they chose to. We understood what he was saying and seeing that we had put a considerable amount of time and energy into this campaign we were prepared to overlook what was obviously a bigoted remark – just this once. Cowlishaw (2006 p. 435) looks at the convenience of this partnership as problematic where 'relationships with individual Whites can be dangerous territory, are read for subtle meanings and implications, including who is present and where the greetings occurs' in the distribution of how-to-vote cards. After thanking us for our efforts and assuring us we would be looked after, he paid for breakfast, politely excused himself and departed for another meeting.

At 4.30 p.m. Jose, Akee and myself drove to the airport to pick up Mike Horan and after the customary greetings around the baggage carrousel we drove him to his regular accommodation at the Banjo Patterson Motel, before attending our only schedule appointment for the night, an address to the large Torres Strait Islander (TSI) community meeting in the centre of town. Maguni Malu Kes (MMK) Administrator, Francis Tapim, warmly greeted us at the office entrance and took delight in showing the shadow Health Minister around his office. Tapim introduced Horan to his staff as he walked through the building and explained the purpose of his organisation in Townsville: to assist his TSI people with housing and associated social welfare needs. Horan was happy to pose for photographs with MMG staff, for the special occasion, although he appeared a little uneasy about his new surroundings.

As I sat next to Horan, waiting for him to commence his speech to a packed room, he leant forward and whispered to me the most bizarre thing I have ever heard from a politician. He said in his laid-back country voice '*Steve, where are the Torres Strait Islanders?*' Stunned by the ignorance of this politician I said, '*What do you mean Mike? … They're seated in front of you waiting for you to start your speech'*. Horan remained straight-faced and without missing a beat replied: *'Mate, I didn't know they had curly hair.'* I thought to myself that I was really dealing with a hillbilly, as he obviously did not know that Torres Strait Islanders (Nakata 2007, Watkin Lui 2012) are descendants of the Melanesian race and hereditarily had dark complexion and tight curly hair. He must have thought they had straight hair and were like Aborigines

in appearance. Perhaps he thought the crowd before him were Papua New Guinean tourists.

Horan commenced his speech, unperturbed by the new revelation of his audience's ethnicity and continued to sing the praises of his government and their commitment to improving the conditions of Indigenous Queenslanders. He again made mention of his commitment to the STF and that he would open an office in Townsville which would work in partnership with Maguni Malu Kes to address health matters. He mentioned he would guarantee that they would also have direct access to the Minister responsible for Aboriginal and Torres Strait Islander Affairs on matters that concerned their community. After the meeting Horan took Jose, Akee and myself to a popular south side hotel for a meal and again reiterated his promise to follow through with his commitment to the STF, if they succeeded in the Mundingburra by-election. Horan paid for the meal and called it a night.

On February 3, I joined Miller, Jose, Akee and our supporters in celebrating the by-election victory of Frank Tanti. Several weeks later the Coalition Party came to power with the expected support of Independent Members, Peter Wellington and Liz Cunningham. Green (2015b), whilst observing the independence of Liz Cunningham, said: 'With both Labor and the Coalition tied with 44 seats, Cunningham chose to put the Borbidge government into office, arguing the Coalition's vote had been higher than Labor's at the 1995 election.' We were confident the hundreds of extra votes that were gained by the Coalition, predominantly deriving from the Torres Strait Islander population, with a small number coming from the Aboriginal population, were a direct result of our efforts.

The calls from members of parliament after the declaration of the polls, to our STF office, indicated to our team that they also thought our campaign had succeeded in changing government in the State of Queensland. I received several congratulatory messages on my answering machine at home from Horan. From the sound of his voice I detected that he was indeed thrilled with the outcome. After weeks of back slapping and congratulations on a job well done, from politicians and party faithfuls, Mick and I flew to Brisbane at the invitation of Mike Horan for celebratory drinks and to start the ball rolling on the commitments made to the STF prior to the elections.

Tony Koch (Waller 2010), Chief Reporter of *The Courier Mail*, looked a little perplexed when he arrived at Parliament House to interview Mick and myself about the partnership and to have photographs taken for the article. The story was to be focused on the agreement entered into by the STF with the Coalition Government to improve Indigenous health in Queensland. Posing for the photograph from left to right – as it appeared in the story written by Tony Koch (1996) under the headline *The plot to woo indigenous vote* published on October 26 – on the balcony at Parliament House were Mike Horan, Health Minister, Mick, Rob Borbidge, Premier, myself and Kev Lingard, Minister for Aboriginal Affairs (Hagan 2005). Mick and I thought we were off to a good start at gaining the ear of the men in charge of running the State of Queensland

That evening I invited my father for a meal courtesy of the government. Dad, a long-standing Labor Party supporter, was pleasantly surprised with the VIP treatment we were receiving at Parliament House from the Coalition Government power brokers. Although he did not say anything to me at the time I also sensed he was uncomfortable with the company we were keeping but diplomatic as usual he agreed to support our cause and was eager to see how our game plan played out.

During the third course of our lavish meal Premier Borbidge and Deputy Premier Joan Sheldon joined us at our table. Joan Sheldon said in a boastful manner for our group and those members sitting adjacent to our table to hear: *'Today I lived up to my promise (to us previously) of being part of a new age Coalition Party as I had the pleasure of announcing the sacking of the Liberal Party Candidate for the Federal seat of Oxley, Pauline Hanson.'* I asked to the reason for the expulsion of the candidate and Sheldon said it was over inappropriate references Pauline Hanson (Rutherford 2001) had made about Aborigines in an article published in the *Queensland Times* on Saturday, 6 January 1996. Borbidge said he supported his deputy and thought this was a good start also in the Coalition Government shedding their 'redneck' image. To me they sounded quite genuine and proud of the fact they had made a stand on not tolerating endorsed candidates playing the race card in the lead up to the Federal election. I was delighted that they had removed a questionable candidate from their party ticket, although I did not have the faintest idea who Pauline

Hanson was or what she stood for. How prophetic those words from Joan Sheldon were that night in the Member's dining room. However she was not to know at the time that she was about to create a divisive national personality that would change the political landscape, as we knew it then – forever. All that bravado from the Deputy Leader of the Coalition Government, over an unknown Liberal Party candidate for the federal seat of Oxley, to impress a couple of murries who had played their part of consequence in winning them government in Queensland. Not bad I thought – not bad at all.

Margo Kingston (1999), in her book *Off the Rails – The Pauline Hanson Trip* shed some light on Pauline Hanson's extreme policies during her time in office:

> Pauline Hanson's political birth in 1996 saw voters in revolt. She was a nobody Liberal candidate in an unwinnable seat until the issue of race, John Howard's Achilles heel, flared way off script.
>
> Hanson was thrust onto the election campaign stage by the media to test Howard on race. He pushed her off with full media support. But voters threw her back on as an Independent in March 1996, handing her the formerly safe Labor seat of Oxley with the biggest swing in the nation.
>
> Hanson described an Australia under threat from within and without. Her solution was an end to multiculturalism, withdrawal from the United Nations, immediate cessation of foreign aid, and the reintroduction of national service. 'I believe we are in danger of being swamped by Asians,' Hanson said. ATSIC was a 'failed, hypocritical and discriminatory organisation' and the UN was an ATSIC on a grander scale. Her debt to the 1950s rhetoric of Yellow Peril and the simplistic appeal to isolationism was all too clear, too surreal (p. xi).

After the Premier and his deputy left our table and we had eaten our desserts, Kev Lingard invited us back to his office for further refreshments. Lingard said he was looking forward to the day when he could move into a bigger office, as the handover was not yet completed and he was still in the Opposition Government's smallish deputy leader's office.

After playing country and western music and reminiscing for a short while Lingard suggested we adjourn the cramped conditions of his office and move to the more palatial Treasury Casino to chance our arm on the gaming tables and do some more drinking. At this stage Lingard's private secretary, Wendy Howard (Steven 2007), appeared and every time thereafter Lingard did not conduct any business with us without Howard.

On arrival at the Treasury Casino, Lingard went straight to his preferred game of Two Up – a sight I was familiar with from our time together at the Jupiter's Casino in Townsville during the by-election campaign. Wendy Howard looked after us with drinks and made several trips to the ATM to get more money for Lingard who was betting heavily. Lingard appeared to me like he was a man without a worry in the world about where his next dollar would come from. Dad and I left the trio (Lingard, Howard and Miller) at around 2 a.m. and from various versions of events volunteered the next day by Miller and Lingard, they were still going strong on both counts of drinking and gambling, well into the early hours of the morning.

During the next couple of weeks Lingard became a regular caller to the STF office asking for ways in which he could better improve the administration of his Aboriginal and Torres Strait Islander Affairs portfolio. Our office started doing position papers for both the Health Department and the Aboriginal and Torres Strait Islander Affairs Department. Lingard invited Miller, Jose and myself to Brisbane to discuss the paper we had developed for his Department. Miller was in high demand and went off to meet with other government officials whilst Jose and I met with Lingard. Our proposal to Lingard was to establish an Indigenous Advisory Council with an office based in the Executive Building in George Street, Brisbane, in which the CEO would have direct contact with all the heads of government departments. Lingard was impressed with our proposal but said he would like to put a bit more meat on the bone and asked us to supply him with the names of Indigenous leaders from the Torres Straits as well as rural and urban Queensland who we would like to see comprise the advisory council.

On return to Cairns, Jose and myself put together names of ten leaders who we thought were held in high regard and were representative of the state's Indigenous population and after having them endorsed by Mick, passed the names on to Lingard. At the same time Horan was in regular contact with us and said that he had done his cost analysis on the six new STF offices throughout the state as per his pre-Mundingburra election commitment. He asked if we could reduce the number by two. We reviewed our original list and gave him the communities of Toowoomba, Rockhampton, Townsville and Mt. Isa as the centres that could maximise additional resources and staff to address the endemic health problems of our people. Little did we know at that time that Horan was starting to side step his election promise.

I started to feel a cool south-easterly breeze wafting slowly through Cairns but I mistook it for seasonal changes and not changes of a political nature. That breeze, registering the ferocity of a cyclone gale, was upon us quicker than I could possibly batten down the hatches and prepare the family adequately to ride out the political storm.

2.8.1 Travesty of justice

Everything was going along famously and I started to wonder if it was starting to become too good to be true. Then on the evening of Thursday, May 2, 1996 our fortunes went from hot to warm, then to very cold. It was on the evening of this day that I made an innocent comment during a meal with Liberal Party members, Frank Caroll (Member for Mansfield) and his wife, Lynn Warrick (Member for Barron Rivers), and Frank Tanti (Member for Mundingburra), at Parliament House.

The meal was organised by Frank Carroll to say thanks to me for coordinating the Aboriginal support group to assist in Frank Tanti's campaign for the seat of Mundingburra. The comment I made was that I was grateful for the financial support of George Price, Senior Vice President of the National Party, for depositing National Party funds into Victor Jose's Suncorp Bank Account to assist us with Mundingburra by-election campaign. Jose paid the National Party money to Jim Akee for his contribution in getting the Torres Strait Islander vote for the Mundingburra by-election. I adjourned from dinner with the same Members for drinks with the Speaker,

Neil Turner, in his Chamber. I again repeated the same comments, inadvertently, to the Speaker of the role Price had played in our campaign. The following day I started getting the cold shoulder from government members and officials, in particular, Wendy Armstrong (jokingly referred to in parliamentary circles as whispering Wendy), Senior Policy Advisor to the Premier.

Armstrong rang to inform me that the money paid to Jose was a personal loan from Price. She further commented that she had spoken to Price who said Jose has since repaid the money. I was surprised that she volunteered that information to me for no apparent reason. It was never my intention to upset the National Party hierarchy by my comments about Price. However, events changed quite dramatically for me following those remarks to the Speaker and other members of the House.

Within months of my dinner with the Members and later drinks with the Speaker, I was charged with fraud by Queensland Police and suspended from work on full pay pending the outcome of the court case. It was alleged that I had breached the State Public Service regulation of not staying at an approved hotel, motel or boarding house when I was in receipt of a travel allowance from Queensland Health. It never occurred to me at the time that I did in fact stay at a boarding house: Mum and Dad ran a boarding house for the Brisbane Bronco's Rugby League Club (Marshall 2005) and I stayed with them and paid the $60.00 per night fee like all their other boarders. The Broncos League Club supplied predominantly Indigenous contracted junior players as lodgers at the boarding house.

It became apparent to me that the meetings with Horan in Brisbane and an associated trip I took to Goondiwindi came back to haunt me as they were the only trips identified in the fraud or wilful false promise charges made by Queensland Health against me. Horan knew I was staying with my Mum and Dad who ran the Broncos' boarding house as he contacted me at their residence on several occasions when he needed my advice.

I sought clarification from the President of the Liberal Party, Bob Tucker, and President of the National Party, David Russell QC, Wendy Armstrong from the Premiers office and the Speaker of the House, Neil Turner as to why the fraud charges

were still proceeding. At this point in time I was suspended on full pay from Queensland Health, but was eager to rid myself of these frivolous charges and return to work. Armstrong, Tucker and Turner advised me to accept advice offered by Frank Carroll, Member for Mansfield. Carroll, the only lawyer in the government's ranks, was evidently nominated by his government to handle my case. Carroll told me he had recently represented a woman from his electorate who misappropriated $30,000 from the Department of Social Security, but on his advice she repaid the money to the department and pleaded guilty. He told me the woman in question appeared before a magistrate, pleaded guilty and soon after departed the courthouse without a conviction being recorded. Wendy Armstrong later informed me that she had spoken to several senior officials of Queensland Health and everything looked good about the matter being resolved in my favour.

It did not quite turn out that way and on Tuesday, June 4, 1996 Detective Mathews, Criminal Investigation Branch (CIB), City Police Headquarters, in Brisbane, interviewed me. After informal discussions before the interview, Detective Mathews said he was satisfied that I was telling the truth and that I did not have a case to answer to. He left the room with his partner and phoned Tony Hayes, Director, Internal Audit, Queensland Health, to inform him of his decision.

Detective Mathews returned to the interview room a short time later and informed me that Hayes, who had responsibility for my case as the Queensland Health senior representative, had instructed him to proceed with the interview. After two hours of interviewing, in which I admitted to staying at my parent's house in Brisbane instead of a hotel, as I believed I did not commit an offence, Detective Mathews, in the presence of his partner repeated that I did not have a case to answer to. Detective Mathews went on to say that of all the interviews he had conducted, mine was one of the most honest and straightforward cases, which, in his opinion, did not warrant any further action.

My problem, in hindsight, occurred at that police interview as I assumed the rules of the Commonwealth, which I worked under as an ATSIC official and public servant for the Department of Foreign Affairs (DFA), Prime Minister and Cabinet (PM&C) and the Department of Aboriginal Affairs (DAA) before that, was the same as the

State whereby a public servant could stay wherever he or she chose to provided they stayed the nominated days at his or her destination to conduct their business. If I had informed the interviewing detectives that I had paid $60.00 per night, when I stayed at the boarding house Mum and Dad were running for the Brisbane Broncos at that time, I believe the interview would have been terminated there irrespective of the disparity between the Commonwealth and State's rules relating to the acquittal of travel allowances.

As the trial date approached rapidly, I organised a telephone hook up with my solicitor from the Aboriginal and Torres Strait Islander Legal Service in Cairns, Mark Stower, and Frank Carroll. Carroll's advice to my solicitor was for me to plead guilty. He said with my unblemished record I would get off without a conviction. Stower passed that information on to his colleagues who also had an interest in my case: solicitors Helen Price and Matt McLaughlin. They also concurred with Carroll's counsel and confirmed that I should enter a guilty plea. They did not consider my options and thought a simple case like mine should be an in and out case with no conviction recorded.

At the time I thought it strange that they were not advising me to plead not guilty of all charges. I also pondered why they were so confident of me getting off by pleading guilty. Was it simply a case of them being too lazy, negligent, over worked, understaffed, had more pressing criminal cases to prepare for – or all of the above – than to put in a couple of hours of research to run a case of not guilty? I was certainly at their mercy: with their offering of free legal representation, being ignorant of the law – although not a defence – so poor and vulnerable under the weight of political attack. I just hoped it worked out as forecast as I was the one to lose the most if my case went pear-shaped.

I had received consistent legal advice to the effect that of the four magistrates available in Cairns to hear my case the two magistrates least likely to be sympathetic to Indigenous defendants were magistrates Errol Wessling (Wijesekere 2004 p. 62) and Trevor Pollock (Ainsley 2003). This advice would appear to have some substance given the number of appeals successfully upheld from decisions of these two magistrates concerning Indigenous defendants.

On day one of the trial, Thursday, September 19, 1996, the Police Prosecutor, Sergeant Brad Hafner only had one charge to read from, instead of the six, which my solicitor, Matt McLaughlin had before him. Magistrate Wessling adjourned the case until the following day so the prosecution could gather all the relevant documents. The following day before the same magistrate, my solicitor Helen Price, standing in for McLaughlin who had other business to attend to, informed the magistrate that I had repaid the amount of money in dispute. She handed the magistrate a receipt for $1,940.00 that was payment for the outstanding money owed to Queensland Health. Police Prosecutor, Sergeant Brad Hafner, had a different figure to ours as a result of Queensland Health's failure to deduct the amount of twenty dollars per day that I was entitled to claim, if I chose to stay with family or friends. The magistrate once again adjourned the case until the afternoon session in order for the Prosecutor to get his figures right.

The Police Prosecutor, Sergeant Brad Hafner, frustrated by the incompetence of Queensland Health, told my solicitor he did not want to take the matter further and would recommend the charges be dropped. During lunch, my solicitor Helen Price and the Prosecuting Officer went upstairs at the adjoining police station to put a call through to Tony Hayes, Queensland Health, informing him of the decision to drop the charges. Tony Hayes insisted the case must continue and told Hafner he would fax the revised figures to him within the hour for the hearing to proceed that afternoon.

In the afternoon session Magistrate Errol Wessling (Hagan 2005) recorded a criminal conviction and gave me a four months suspended jail sentence. This shocked not only my solicitor but also the experienced *Cairns Post* court reporter, Jane Williams. She told me she was shocked to see such a harsh penalty handed out to someone with no previous conviction and for such a small amount of money, which had been repaid.

A week later I received a telephone call from the prosecuting CIB Detective, Graham Hogan, who handled my case from day one. He informed me Queensland Health had found more claims that they were also going to charge me with. Detective Hogan reported to me that as the new claims of misappropriation related to the same time period as the first claims he would advise the magistrate that no further action be

taken against me. He told me he felt I was already dealt with quite harshly in the first trial and believed no further action would derive from a court appearance to tidy up the loose ends.

At this stage I was devastated and on advice from my three solicitors agreed to plead guilty once again. I also stayed, for these new charges, with my parents and paid them $60.00 per night as I had done at every other occasion. These were trips to Brisbane at the request of Opposition Health spokesperson Mike Horan to discuss Indigenous health matters. My solicitors provided me with a legal opinion to the effect that it was unheard of for another magistrate to overrule on a previous case on matters of the same substance. In other words if they were tabled together in the first instance it would not have impacted any differently to the original sentence.

On the day of the trial Rhonda and I drove our young son Stephen to his preschool and arrived early at the Cairns Court House, with Jayde in-arms, allowing for plenty of time to talk to my solicitor before the hearing. My three non-Indigenous business colleagues from the Rainbow Serpent Cruises came to wish me well over a coffee in the Court House cafeteria. I told them not to worry about sitting in on the hearing as I would be in and out quite speedily, as advised by the prosecution, and would see them back at the marina to resume work on our cruise enterprise within the hour. I had since left the STF after being embroiled in the fraud controversy and had taken up an offer to start an Indigenous tourism venture with local businessmen and an overseas investor.

Everyone seemed upbeat as we walked into the courtroom and to my surprise sitting on the bench was Magistrate Trevor Pollock – who famously ‘defended himself against an alleged claim by Chief Magistrate Di Fingleton that his workmates thought he was “a complete bastard”’ (Hagan 2005 p. 156) years later; who I was led to believe was on vacation. I was warned that Magistrate Pollock was the most unsympathetic of all magistrates in Cairns in his determinations involving Indigenous defendants. I did not believe that anyone could be as cold and heartless as Magistrate Errol Wessling based on my recent dealings with him.

I was not fazed by the sight of an aging magistrate and stood as confident as one could be, as a criminal defendant, in a courtroom. He studied the new charges and without any hesitation ordered that I be detained in the watch house until he had further time to decide on his decision over lunch. I was still in a state of shock when two burley police officers escorted me, by the arm, out of the courtroom.

As I was marched out of the courtroom I glanced across at Rhonda, who stood with Jayde in her arms, in a trance-like state not quite comprehending the gravity of what the magistrate had just ordered. I tried to give her a reassuring smile but I know I failed miserably. I was very disappointed to have had Rhonda witness the indignation of me being led away by police and as I walked up the slight incline to the cells in the rear of the courtroom I felt tears roll down my face. I kept telling myself that I would not allow Magistrate Pollock to break my spirit and proceeded to obligingly follow instructions from attending police.

As I began my long two-hour stay in the holding cell I observed to my right a very thin white man pacing his cell. He looked like he was in a daze. I tried not to stare at him, as I had enough problems of my own to worry about, but this man kept pacing and pacing and then all of a sudden it dawned on me that he was the man I had heard about on the news on my way to court. This scrawny man was being held over the heinous crime of pouring petrol over a school boy from a high profile local Aboriginal family, Jandamarra O'Shane (Griffith 2002), in the North Cairns Primary School yard, and setting him alight. He continued to pace his cell and did not appear agitated or remorseful for the crime that shocked the nation and made Jandamara a household name. Paul Streeton was convicted in 1997 of attempted murder for the crime committed against Jandamarra and received a life sentence (Mascord 2011).

After a short time sitting uncomfortably and in a state of confusion in the cell my solicitor Matt McLaughlin visited and informed me with what I thought was good news. He tried to reassure me that Magistrate Pollock had placed me in a cell to put a scare into me and that he would free me when court resumed after lunch. He sounded convincing, but then again he also said I would not be convicted if I pleaded guilty for such a trivial offence in the first trial with Magistrate Wessling.

I am not sure if the confident words from my solicitor were words intended to soothe my level of discomfort in an alien setting or masked words to hide the glaring imminence of predictable judgement from a magistrate with form on his side when dealing with Indigenous defendants. When I was led back into the courtroom I was asked to stand in the dock whilst Magistrate Pollock read out his decision. I gave an encouraging smile to my wife in an attempt to reassure her that everything would work out okay and then instantaneously Magistrate Pollock read his decision: 'to serve a term of six months in prison' (Hagan 2005 p. 159).

Harris (1993) explains the power of a person in position of authority to remove someone's civil liberties as 'whiteness in property', where the 'origins of whiteness as property lie in the parallel systems of domination of Black and Native American peoples out of which were created racially contingent forms of property and property rights':

> In particular, whiteness and property share a common premise – a conceptual nucleus – of a right to exclude. This conceptual nucleus has proven to be a powerful center around which whiteness as property has taken shape. Following the period of slavery and conquest, white identity became the basis of racialized privilege that was ratified and legitimated in law as a type of status property. After legalized segregation was overturned, whiteness as property evolved into a more modern form through the law's ratification of the settled expectations of relative white privilege as a legitimate and natural baseline (p. 1714).

Vaught (2012 p. 55) contends for 'White institutions, this highly guarded, exclusive property is, in part, the right to construct Blackness as the subhuman, criminal, noncitizen antithetical to Whiteness' and explained why it was possible for Magistrate Pollock to sentence me, as a black man, to a term of incarceration … because he could. He had enough evidence before him to go against custodial sentencing, but he chose not to. Only he could answer why he came down in favour of the harshest of all punishments for someone of my exemplary standing in the community devoid of any history of contact with the judicial system.

My heart missed a beat on hearing the decision and I looked quickly towards Rhonda who was in an extremely distressed state and was crying and nursing our two-month old baby Jayde. I was fortunate that a young Indigenous policeman who had recently graduated from the police academy, Constable Mark Malthouse, was on duty at the time and processed me. Constable Malthouse on completion of the standard paper work for new prisoners rang his mother Elaine to come down to the Court House to care for and comfort Rhonda, who was inconsolable and alone with Jayde. My wife and I were friends of Constable Malthouse's parents, Ron and Elaine, and often entertain each other over dinner at our house or through reciprocal arrangements at their house. Ron also worked as a bus driver for Wuchopperen Medical Service in Cairns where Rhonda first met him as a colleague.

Elaine came immediately to the Court House and followed Rhonda home where she promptly contacted Rhonda's mother, Mary, and brother, Bradley, in Innisfail to inform them of my unexpected predicament. Mary and Bradley dropped whatever they were doing, packed their bags and made their way to Cairns. I am very grateful that Elaine was able to forego whatever she was engaged in at the time of taking the call from her son to be with Rhonda at the lowest point in her life.

The white police officers who were working behind the counter with Constable Malthouse commented to me, on seeing my charge sheet, that there was only one magistrate in Cairns, if not Australia, who would have the audacity to hand down such an unjust sentence. In unison they said 'padlock Pollock' (Hagan 2005 p. 159). I kept hearing that wretched nickname for hours after the impregnable prison doors were shut loudly behind me.

In another place and in another time I probably would have laughed, if it was not so demoralizing, but unfortunately I was in no mood to be humoured.

2.8.2 The incarcerated subject

Police, concerned for my welfare, agreed to place me in a cell by myself. However, as the afternoon slowly turned to evening there was a change of staff shift and the officer in charge of the new roster, aware of my circumstance, said he would move me to a

cell with someone he believed I would be comfortable sharing with. He told me he had to place a prisoner showing signs of HIV AIDS symptoms in the cell I occupied, as he needed to be isolated from the rest of the inmates in custody.

If I were requested to offer advice to people, black or white, male or female, about the worse day to appear before court, I would most definitely nominate Friday. The issue of bail and other legal relief can be frustrated by officials having an early mark from work on a Friday afternoon or finding their priorities at that late part of the week far removed from their core business. Once the weekend arrived, back in that era, there was not a lot that can be done except wait until Monday to try and gain attention and hopefully reprieve for your dire plight.

My solicitors tried to get me out on bail but informed me dramatically that the Director of Public Prosecutions (DPP), based in Brisbane, had opposed bail on the grounds that he believed I was a risk to society. In my opinion this decision was based on my Aboriginality and devoid of consideration of my private school and tertiary education, sound professional career as a senior public servant and former diplomat who served abroad for his country, to mention a few, and of never being out of work, not to mention my exemplary record of no previous contact with the criminal justice system.

The DPP made a heartless decision from a Whiteness mindset that Harris (1993) refers to as ‘that place – where white supremacy and economic domination meet’ that allowed them to view a travesty of justice against me, a black man, in such a way that also allows them to ‘remain oblivious to the worlds within worlds that existed just beyond the edge of their awareness and yet were present in their very midst’ (p. 1711). I was devastated as I had never been before a magistrate or judge in a courtroom before in my life and had no prior convictions, nor had I been unsuccessfully tried for drugs, rape, assault or any other crimes that would make me a threat to society. I did not have money hidden in a tax haven on a remote island, nor was I about to abscond abroad to assume a new life in anonymity.

From my perspective, Magistrate Pollock, imbued with Whiteness, had not been impartial in his handling of my case as expressed by Mack and Anleu (2010) under their title *Performing Impartiality: Judicial Demeanor and Legitimacy*:

> Judicial officers must craft an approach to all participants that respects their allocated roles in the adversary system and reinforces the principle of impartiality, while providing sufficient engagement for a legitimate exercise of judicial authority (p. 142).

What Magistrate Pollock flagrantly overlooked in sentencing me was my impeccable employment record and standing in the community, my lack of contact with the judicial system and the fact I had repaid the sum of $1,940.00, which I had allegedly misappropriated. To put the latter point into perspective *Sydney Morning Herald's* journalist Daniel Hurst (2013) wrote of Prime Minister Tony Abbott repaying $1,094.64 for abuse of government entitlements to attend the wedding of Sophie Mirabella MP in 2006 and again, when caught out, repaid nearly $9,400.00 in travel expenses incurred while promoting his book *Battlelines* in 2009. In the same article Hurst also exposed former PM Julia Gillard for repaying $4,243.00 in 2007 'when she was deputy opposition leader relating to partner Tim Mathieson's private use of a taxpayer-funded car' (Hurst 2013).

The alleged offences of Abbott, Gillard – implicitly through her partner – and myself are not dissimilar, yet two of the three held the top public service position in the nation as Prime Minister and the other had to endure the indignity of incarceration and bear the burden of all that goes with that travesty of justice. Why? The answer to the vexed question can be found in the central argument of this dissertation: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia.*

It is that silent voice of Whiteness imbued with the wholesomeness of community expectation that rings loudly in the minds of judicial members when ruling on Aborigines, who are thought to have breached societal codes of conduct, that *we can forgive a poor error of judgement for white officials but need to come down strongly on black perpetrators with their noses in the trough*.

Instead of following a common law precedent, the presiding magistrate in my case, through his Whiteness lens magnified with judicial leverage, saw an Aboriginal man who needed to be controlled and contained. In the words of Banerjee and Tedmanson (2010 p. 150) Magistrate Pollock had been influenced by the 'discourse of whiteness in Australia that have significant material effects in the development of policies of control, containment and regulation of Indigenous peoples'.

The other major problem I discovered being incarcerated on a Friday is the fact that night is the busiest night of the week for officers on duty. On Friday nights police station cells around the nation are full to overflowing with those who are alleged to have transgressed whilst under the influence of alcohol and/or illicit drugs, including theft and assault crimes generally as well as an assortment of the bad elements of society who chose, for whatever reason, to commit their inimitable crimes at that time of the week.

I shared a cell with a young Indigenous prisoner who had been serving time for a few days on drug related charges. I soon discovered, from personal observations throughout the day and night, that prisoners were placed in cells based on race. I never got to ask an official about these specific arrangements but surmised it probably had something to do with a belief that keeping the races apart would ensure a degree of equanimity.

After many hours of reflecting on events of the past six months I felt myself drifting in and out of sleep. I would have only been asleep for an hour when I was awoken by a major commotion involving a prisoner being placed in the padded cell by officers on duty, a mere 10 metres from my cell. I sat upright, not sure how to prepare myself for this totally new level of excitement, and looked in the general direction of the noise. Unfortunately I could not see the prisoner as he had already been forcefully placed into the padded cell by duty officers and was now venting his spleen on anyone within earshot of the cell, which was the entire prison population.

Many white prisoners – in the row of cells opposite those of Indigenous inmates – on hearing the commotion started screaming obscenities at him to shut up and go to

sleep. It would appear their advice fell on deaf ears as the new inmate appeared too mad with the world and in his return volleys of vitriol threatening to tear the heads off the shoulders of complaining inmates when he was released from the padded cell in the morning. I was anxious to see what this man looked like and had an image of a heavily muscular wild man from the west. I thought to myself he must be handy with his fists as he was shouting abuse freely at prisoners he had not even seen. When morning finally arrived, although you never knew what time it was because the cells have no windows and the dim flickering florescent lights illuminating all cells impeded the guess work on the exact hour of the day or night, police led a short chubby fellow from the padded cell to a cell without any prisoners. He was definitely not the type of macho prisoner I had expected to see with rippling biceps and with height exceeding that of your average Australian male.

As the clock struck 8 a.m. cell doors were opened simultaneously for prisoners to stretch their legs in the narrow corridor and to take a shower at the opposite end to the padded cell. Most prisoners made their way to this noisy inmate's cell, on release to the corridor, to get a closer look at the cause of their interrupted sleep. To my surprise some of the white prisoners, although conscious of the conspicuously darkened TV monitors on the ceiling recording their every move, walked into his cell and assaulted him. Others threw food at him and I observed one prisoner throw a bucket at him. I waited for intervention from duty officers but there was none forthcoming.

After witnessing the humiliation of the new inmate from the padded cell I lined up behind others to wait my turn for a shower. There were only a couple of showers in an open exposed area available for over thirty men. I tried not to stare at other prisoners with only towels wrapped around them, revealing an assortment of decorative tattoos and battle scars on their upper body, waiting their turn to use the facility. After a not so private shower I dressed back into my only outfit I was wearing when incarcerated, less belt, socks or other potential suicide aids, and followed inmates into the courtyard.

The courtyard, a concrete pavement measuring 6 square metres, was the only place we could fully stretch and see a bit of sunlight for the 30 minutes allocated daily. The noisy prisoner also had to venture out to the courtyard where again a couple of white

prisoners continued their harassment. Following a five-minute barrage of abuse on entry to the courtyard, both physical and verbal, this chubby prisoner was crying and apologising profusely to everyone for his outburst during the night. The harassment subsided after a while and I must admit I did feel sorry for the distressed man who was obviously under the influence of alcohol and or drugs when placed in the padded cell eight hours earlier. By now the point was well and truly made about respecting the silence of the night. As the harassment was taking place Indigenous prisoners, who were in the majority, paced the perimeter of the restrictive exercise yard without comment. Perhaps if the chubby prisoner had made racist remarks or threats from the safety of his padded cell during the night, Aboriginal prisoners may have joined in on the abuse he received. I never asked them why they did not get involved and they never volunteered that information to me.

On another exercise break I noticed two young traditional men, from the Cape York Peninsula, fill their mouths full of water and without attempting to swallow walked slowly at the rear of prisoner's line to the exercise yard. As usual I also strayed behind everyone else, for no apparent reason, and on this occasion was curious about why these two men were not swallowing their water. To my surprise they stopped at the door of the female prisoner's cell and emptied the water along the edge of the door entrance. The men then asked female inmates standing a respectful distance from the doorway, to take their pants off and stand over the reflexion of the water so they could partake in a vicarious peep show. I felt uncomfortable on hearing the lewd request, a short distance behind, and did not stay around to see whether the women acquiesced and played out to their inventive erotic fantasy, albeit of a perverse nature.

I was really a novice in the jail. I wanted to sound tough but had trouble convincing some of the seasoned white criminals that I was indeed a bad guy who earned the right to be locked up. I wanted to tell prisoners, who enquired as to why I was in jail, that my fraud case involved hundreds of thousands of dollars. I felt my story needed to be believable and criminally audacious, other than admitting I stayed with my parents instead of in a sanctioned hotel. Instead I was honest and told them the truth about the Mundingburra by-election and the subsequent frivolous charges that resulted in my conviction, incarceration and refusal of bail by the DPP on the grounds that I was a risk to society. One prisoner asked me if the amount was not so great why

I did not pay it back to avoid time inside. I informed him that I had repaid the money that was alleged to have been misappropriated which only made my story even more implausible. There were a couple of prisoners who did not buy my story and hinted that I was insulting their intelligence. I could not win so I did not bother going down that path again and spent most of my time reading and trading books. When I received my first opportunity to use the public phone, one of the white prisoners shouted out '*don't forget to say hello to Premier Rob for us*' in reference to my incredulous story.

I found the inherent Whiteness of prisoners omnipresent. The belief of white prisoners that even in the confines of secured prison walls – where everyone has been charged with an indictable offence or convicted of such – that they are more privileged than black prisoners occupying the same cramped space, astounded me. An assumption that a black prisoner could not possibly be more successful, educated or politically connected than themselves on the outside is not only misguided but reeks of Whiteness aligned to their 'set of cultural practices that are usually unmarked and unnamed' (Frankenberg 1993 p. 1). McIntosh (1988 p. 1), in the same vein, makes the analogy of the taken for granted stance of superiority of white people over 'Others' generally viewing as them having an 'invisible knapsack' of accumulated white privileges. Australia's best known educator, Dr Chris Sarra (2012 p. 108) best summed up the undervaluing of successful Aboriginal people through the bigoted eyes of 'Others' in the case of a white teacher who mistook him for a para-professional Community Education Counsellor (CEC) and not a Career and Guidance Counsellor on his first few days at his new school:

> 'So ... you've been a teacher?' she said, as though she was not quite convinced.
> 'Yes I'm a PE and English teacher,' I said, while thinking silently, 'and I have completed my Masters in Education so I am more academically qualified than you … and I get paid almost double your salary.'

The lesson learnt in this instance for me was the blunt primeval fact that once you strip away all the layers of success: good job, tertiary qualification, political clout, cultured lifestyle of having seen and wanting the best, and you have – in a watch house courtyard of convicted felons or those waiting trial – one's ethnicity as the only discerning difference. That is the circumstance when Whiteness rises to the fore and

dictates the social pecking order – and that, farcically, is without knowing or factoring in the severity of the crime committed of those, black or white, standing or seated next to you. MacMullan (2009 p. 8) views the inherent superiority standpoint of the class of white inmates I had to contend with as simply of white folks having 'convinced themselves to see racial justice for people of color as a net loss for white people'.

A day later the same group of prisoners were asking me to write letters for them and assisting them with their appeals as they had received word, from the outside, that I was indeed telling them the truth. I gathered they must have received their information from sources that were privy to my circumstance; readily available in the small Cairn's community via media stories or news from court officials or the public generally who were present in court on the day of my sentencing.

On another occasion I asked my cellmate if he would mind if I invited another Indigenous prisoner, who I spoke to during our courtyard breaks and found to be a pleasant fellow, to bring his mattress to our cell. Officers in charge had no problem with prisoners changing cells provided there was nothing suspicious or untoward going on. My cellmate told me that it was alleged this guy was awaiting court on charges of killing his baby. It was alleged he attempted to assault his girlfriend, who instinctively, but unfortunately, shielded her face with their baby she was holding. It is alleged his fist smashed into his baby who sadly did not survive the violent impact and died. I was shocked and disturbed by this information and never sought or requested other prisoners share the cell I occupied again. All cells appeared to be overcrowded and there I was, for the duration, with only one other prisoner as a cellmate. I was not about to complain or seek an increase in our already cramped room where movement of any sort would have been an imposition on our personal space. The only change with my shared cell arrangement came about when one prisoner was transported from the Cairns Watch House to Lotus Glen Correctional Centre and replaced by another who was transported from Lotus Glen Correctional Centre to the Cairns Watch House to await fresh charges being heard in court.

I was glad I did not follow through with the invitation for the distraught father to join us in our cell. I suspected he was going through an extremely difficult time handling

the crime he allegedly committed. My two young Indigenous cellmates' crimes involved drug use and trafficking. I received a visit from the Murrie Watch cell visitors who asked if I needed anything from home such as books, toiletries and so forth. Murri (Aboriginal) Watch is a critical contact for prisoners who use them as a conduit to get messages to their families who are unable to visit the jail for a variety of reasons, including lack of transport and a fear of being arrested on suspicion of outstanding warrants or trumped up charges. The majority of Indigenous prisoners I came in contact with did not have the telephone connected at their place of residence. Some prisoners were itinerant or street dwellers and did not have a house to call home.

When I explained my reason for being in jail to the Murri Watch woman she told me to relax and take it easy and not to rock the boat by appealing. She suggested I do the time and get it over and done with, as I would probably be out of jail after doing two months of my six-month sentence. I thought to myself what inappropriate advice to offer me when I did not believe I should be incarcerated in the first place and most definitely did not intend to roll over and succumb to the degradation and shame the likes of Magistrate Pollock wanted me to feel as an incarcerated subject. The advice offered was not an informed one with respect to my particular circumstances and was one I suspect came about based on her history of witnessing inmates accept their custodial fate – whether guilty or not – and being compliant to a biased judgement by the judicial officer seated in the biggest chair at the highest point at the front of the courtroom.

Of all the inconveniences of prison life the greatest apprehensiveness I had was using the toilet during the day in full view of all the prisoners. The toilet bowl was not partitioned or concealed, as one would ordinarily expect for privacy. I decided the only time I would use it was when my cellmate went to make his allowable phone call or was asleep at night. After four days I started to become very disillusioned with my plight and although I remained confident of being released on bail, I did not want to spend another Friday night in the Cairns Watch House.

The seasoned prisoners I spoke to during our daily half hour of restricted exercise told me of the easy life at Lotus Glen Correctional Centre and assured me that I would be

placed in the lowest classification and possibly sent to the prison farm. They described prison life as being on a vacation at a strange but comfortable motel. They said you could have a feed whenever you wanted to in the prison cell block kitchenette and could work out in the gym and take classes in the TAFE run programmes at your leisure. I knew a bit about adult learning programmes as I had funded a couple of them when I was Manager of Aboriginal Programmes with the Federal Department of Employment Education and Training (DEET). In fact I launched a similar programme with senior prison officials about twelve months prior to my incarceration at the prison. When I weighed up the option of volunteering to go to the Lotus Glen Correctional Centre, instead of waiting for word on my bail application in the Cairns Watch House, I thought what a surreal outcome it would be to not only be the creator, author and funder of the adult education programme at Lotus Glen Correctional Centre but also a participant as the incarcerated subject.

The prisoners told me it was simply the luck of the draw which inmate would be offered a place on the limited bus seats to Lotus Glen Correctional Centre on the Friday run. By now I had convinced myself that if I was to wait any longer for my legal team to get me out on bail I would be better served waiting at Lotus Glen Correctional Centre then sitting around in a watch house with artificial lighting. I did not know if it was cloudy or sunny outside. If it was not for the meal call I would be none the wiser about the time of day it was in that friendless, insipid and claustrophobic environment.

Rhonda visited me in the watch house and told me Stephen Jnr was asking about me. She said she told our three-year-old son that I was away on business and would return home soon. I cried on hearing about my son and again throughout our exchanges at the mere mention of our children. It was so sad talking to my wife through an austere wire mesh partition. The pain in Rhonda's eyes was palpable and the wire meshing enhanced the remoteness and despair of the visit. I had played a major role in changing government in the State of Queensland and in return I was now shedding tears with my wife in a non-contact gaol visit. To make matters worse I could not tell her when I would be returning home to be with the family. Rhonda tried to fill me in on everything that was happening at home and around town, but unfortunately her briefing was punctuated with bouts of uncontrolled emotion, which made her

conversation incoherent at times. She did manage to tell me that I was receiving literally hundreds of well wishes from family and friends around the nation who had heard of my ordeal and telephoned our home to offer support.

Being in gaol is a very humbling experience and despite its ignoble physical locale and intrinsic societal stigma attached to it, I remained upbeat with my bail application. It was my belief that although I had temporarily lost my freedom I was not about to lose my pride. I did, however, feel myself becoming more introverted out of necessity to avoid conflict with other prisoners. Most of all I was determined to see out my days, in full if necessary, and then start afresh with my young family.

I was lucky, if you can call it that, to be chosen to go to Lotus Glen Correctional Centre on the Friday bus run. As I was being processed and handcuffed I met another Indigenous police officer at the front counter. This person was a mature-aged cadet who gained entry into the police academy after completing an entry qualification at the South Johnstone TAFE College in Innisfail. I also provided funding, when Manager of DEET, to support the TAFE justice programme at Innisfail for Indigenous people who required extra tuition to improve their education requirements to gain entry into the academy. I remember being the guest speaker to this officer's graduation class. Now I was avoiding eye contact with her, dressed immaculately in her smart blue police uniform, as I sat shackled obediently awaiting transportation to the Lotus Glen Correctional Centre. I was most uncomfortable sitting edgily waiting for orders to board the bus and wished, for a fleeting moment, that I did not get chosen for that prison run.

As soon as the last prisoner was signed out of the Cairns Watch House we were directed onto the bus and departed the building via a side exit. As we drove north through the city I tried not to look out the prison bus window in fear that someone might recognise me. Conversely, at the same time, other shackled prisoners in the bus were eager to spot and acknowledge family and acquaintances as our conspicuous mode of transportation, replete with secured iron barred windows, crawled along Sheridan Street to merge into the Captain Cook Highway. Some prisoners wore the criminal title like a badge of honour.

The only thing that worried me, besides remaining inconspicuous and anonymous inside the bus, was the weight of the heavy metal handcuffs. I kept my hands firmly on my upper legs to support the weight of the secured cuffs. So heavy were the handcuffs that I thought I would do myself irreparable damage to my wrist if I allowed my hands to fall freely between my legs. I definitely was not prepared for the weighty handcuffs and with no previous experience to recall I tried my best to alleviate the pain the best way I could for the next hour and a half transportation run on the prison bus fully equipped with security bars and armed guards. That was an experience I would not recommend to anyone.

During the trip up the picturesque Kuranda Range I looked across at the popular tourist Sky Rail attraction and could clearly remember sharing the small four-person cabin with Kev Lingard and Wendy Howard. In months to follow the photograph I took of Lingard and Howard would feature on the front page of the *Courier Mail* for a story written by their Chief Reporter, Tony Koch. Howard resigned soon after that controversial photograph was printed. However this time my mode of transport up the Range was somewhat less comfortable than my trip on the Sky Rail with the Coalition Government movers and shakers month's prior. In the cabin in front of us on our way up through the thick rainforest canopy to the Jabukai Aboriginal Dance Theatre at Kuranda that day were politicians Lyn Warwick, Naomi Wilson and Frank Carroll.

It was quite an intimidating experience driving into the Lotus Glen Correctional Centre and passing through the huge gates surrounded with razor sharp wire. I thought to myself how could anyone possibly escape through what appeared to be an imposing unassailable fence. I did not bother to ask any of the prisoners on the bus if they were aware of any infamous breakouts – as an ice-breaking conversation piece – as I was more worried about the imminent process of being signed in.

We were ordered off the bus and walked single file into a processing room where we waited until our names were called. I was towards the end of the line and stepped forward on finally hearing my name called by the Warden. A prison official ordered me to shed all my clothes and do the mandatory squat and cough routine to make sure I was not importing any contraband. After completing the awkward and humiliating strip and cough drill I was handed a cake of coarse soap and told to scrub under my

arm pits and fingernails. I must admit the sandpaper-like soap, which all inmates had to use on arrival, was about as far removed from the Palmolive Soap I used at home as one could get. I gave an impression I was scrubbing vigorously but in effect I avoided direct contact of the soap with my body in fear of shedding layers of skin in the process.

When it was my turn to fill out the paper work, the burly prison official, roughly estimated to be in his sixties, could not stop shaking his head in disbelief. He asked me if I had any tattoos to which I replied I did not. He asked me what the highest grade I attained at school. I told him I had completed my matriculation and had also graduated from university with a Bachelor of Arts Degree (BA). He asked me what I was sent to Lotus Glenn for, to which I replied misappropriation. Without lifting his head he asked how much money I had misappropriated, all the time trying to get a fix on the seriousness of the crime, and again I told him the amount and that I had repaid it. After exhausting his entire list of mandatory questions he surprised me by blurting out the words I still vividly remember to this day: 'Look mate, I've never had anyone here on charges like this before and I've been here for a hell of a long time – this is obviously politically motivated' (Hagan 2005 p. 167).

He ended by saying he did not expect to see me here for very long. I asked him if he had heard anything about my bail application to which he replied he had not. I remember my solicitor telling me that he was confident of getting a positive response to my bail application by that day. However, I chose to be transported to the prison instead of waiting in hope of a positive response and run the risk of being stuck in the Cairns Watch House for another nauseating weekend, if unsuccessful. I was prepared to wear the consequences of my emotive decision to go to Lotus Glen Correctional Centre.

After I was fitted out with my basic prison uniform and boots I was taken to the medical facilities where I sat patiently waiting for my time to be blood tested. I presume they wanted to test me to see if I had HIV AIDS, Hepatitis B, or whether I was a diabetic or suffered from any medical condition that might impact on my time in their care. A young nurse called out my name and proceeded to brief me on the purpose of the compulsory blood test requirements of all new inmates, as I assumed

my position on a sturdy seat in her division of the medical ward. What she was really saying is that in addition to tests on blood pressure and cholesterol readings the prison officials needed to know if I had a contagious disease that would require me being isolated from the general prison population.

At first the simple process, to which I have had done on several visits to pathology laboratories on recommendation of my general practitioner, was going smoothly until she thrust the needle into my arm a little deeper than normal. I jerked my arm away from her in a defensive manner and blood squirted all over her snow white uniform. I asked her what she thought she was doing and she replied that she was not getting enough blood into her sample bottle and needed to extract more. I told her she only had to ask me what she required to complete her task and I would have been more than happy to oblige. After my firm words and actions I felt a strange sensation pass over me and thought that maybe I needed to be a little less assertive and more accommodating. Not a good start Steve, I thought, trying hard to remind myself that I was in a prison and not a boardroom where robust debate was encouraged. We repeated the process and this time she got the required amount of blood into her sample bottle and casually called forward the next inmate. She did not outwardly show any concern about my blood spraying on her uniform and possibly onto her body. At first I thought she would become agitated and stressed about the prospect of me being HIV positive and thus posing a personal high health risk.

After that unfortunate ordeal with the prison nurse I was told by an officer to proceed with my prison issued possessions to a particular block where I would be housed for the duration of my time in the prison. I walked along a path in the direction of the block and observed prisoners, majority being Indigenous, performing a range of duties from mowing the large expanse of lawn, gardening, to taking laundry and an assortment of equipment on trolleys between buildings. They went about their business and knew exactly who I was: a new nameless Aboriginal inmate.

I finally arrived at my destination and made my first major mistake in prison, if you could count the indiscretion with the nurse a minor blunder. Instead of stopping on the yellow line I stepped over the bright coloured line and inside the office of the Warden for that block. The Warden promptly admonished me with an outburst I have not

heard since I was given the cane across the palm of my hand on my first day in grade 10. All I did was step over the line by three centimetres. After that incensing introduction to the block I was eager to locate my name on the notice board to find out what classification prison officialdom allocated for me. I half expected to be given the highest risk classification and thrown in with the murderers and serial rapists after the pitiful refusal of the DPP to an early bail application deeming me a risk to society.

As I walked the corridor to my cell wing I passed a familiar face in an Aboriginal Liaison Officer (ALO) I knew from Cairns who told me that another colleague of his was waiting for me to provide a lift back home. He told me the person unfortunately could not wait any longer and drove to Cairns alone. I became excited as I thought this was the confirmation that my bail application was successful after all. I did not know whether to laugh or cry on hearing those few words from the ALO but thanked him and continued along the corridor in case my Warden adversary, standing no less than five metres away, started barking out more orders in his husky voice.

At last I arrived at the prison wing and searched frantically for my name on the list, taped to the window, to find out the all-important classification. I was relieved to see low classification beside my name and knew then I would not have to share a wing with extremely violent inmates who were sentenced for more than a month's stay courtesy of the government.

I found it difficult to hear instructions from the Warden standing behind the thick glass panel in his control room. I told the Warden I could not hear him and asked if he could repeat himself and also if he knew the status of my bail application. In a raised voice he told me he was not given any instructions from the front office on the outcome of my bail application and would page me if any news came to hand. He told me I would be sharing a room in the second last cell, on the left side of the long corridor of cells, and then pressed a button simultaneously to allow me entry into his ward. Once again I observed the dominant and subordinate roles performed within the prison: all prison officials were white and majority of inmates were black. The mere fact of waiting obediently for instructions and then following them unchallenged from the moment I stepped off the bus into the prison I was, in effect, viewing the power relationship between those with influence (white people) and those without (black

people); of whiteness as representation of ‘normality, dominance, and control’ (Garner 2007 p. 9).

The thought of being locked up with another complete stranger was again a little disconcerting but something that was out of my control. I thought at least it would not be a serial killer or a felon in for a long stint for an extremely violent crime as they were housed in the high-risk wing in a separate block from the low risk inmates. I did notice a sizeable crack in the thick windowpane in the adjacent wing to the one I was entering and wondered if I was in fact closer to the violent offenders than I thought.

As I did the long fifty metre walk down the row of cells I observed many prisoners, mostly Indigenous, some I had seen around the streets of Cairns, watching television and eating toasted sandwiches and other snacks at their leisure. The sight of casual dining by prisoner confirmed what other inmates were saying in the Cairns Watch House about freedom to move around the cells and to eat food outside the normal mealtime. So far so good I thought contentedly as I quickly appraised the potential of turning a bad situation into an agreeable one should my stay become a little more permanent.

As I walked through my cell door I immediately noticed a double bunk bed with a tall thin long blond haired white inmate sitting on the bottom bed. He showed no noticeable reaction and stood to greet me as I entered the room. We introduced ourselves with firm handshakes and he informed me that he had the bottom bunk and I was more than welcome to borrow any of his belongings if I needed to. I gathered he was referring to his radio and books positioned neatly on his shelf. As we engaged in small talk I noticed a partitioned room with a shower and toilet with a sizable enough brick wall divider providing privacy. I was relieved to see the wall as I thought it would at least make prison life a little more bearable given the horrendous and demeaning six nights I had just endured at the Cairns Watch House with no privacy to speak of.

Gittins (2014) contends it costs the tax payers $275 per day or approximately $100,000 a year to keep an adult in jail and even more astounding is the cost of incarcerating Aboriginal adult prisoners:

> Aborigines make up 2.5 per cent of the Australian adult population, but account for 26 per cent of all adult Australian prisoners. If you want me to give you some economic reasons we should care about this, it's not hard. On average it costs $275 a day to keep an adult in jail. So it's costing taxpayers about $800 million a year just to keep that many Aborigines in prison (p. 4).

As I warmed to the idea of showering in private and not having to strategically plan the right moment to go to the toilet – when a fellow inmate was asleep or taking a phone call at the front office – I convinced myself that I had made the right choice catching the heavily fortified bus to Lotus Glen Correctional Centre, albeit in handcuffs that impacted my physical and mental wellbeing.

It did not take long for the young blond haired inmate to ask what crime I had committed to land in a place like Lotus Glen. *Here we go again* I thought but rather than get frustrated I picked up the discourse threads again on the Mundingburra by-election controversy and subsequent breach of agreement by Mike Horan. I told him about the dogged determination of Horan's henchman, Tony Hayes, to pursue me to jail even after being advised by the initial interviewing detectives and then the prosecutor, to drop all charges. When I completed my story, one I had recounted often in the past six days, my new inmate look intently at me with a peculiar expression on his face not quite knowing if I was lying or telling the truth. I suppose most inmates proclaim their innocence inside prisons throughout the world and want to cajole others with their sad stories of benign levels of culpability. I was not trying to impress this stranger but I certainly had a sad story to tell and it was not one that lacked veracity.

I believe a significant number of prisoners incarcerated would not be inside if they had money, status and political connections. I thought I had political connections but I most definitely failed in the money and status categories. But I am convinced that my incarceration aptly fits the central argument of this dissertation: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia*.

One of the traditional inmates, from a Cape York Peninsula community who travelled with me on the prison van, came to my cell and invited me to meet his relatives in another cell. Most of the Cape York Peninsula inmates were in their late teens or early twenties and appeared to be comfortable among relatives and friends in prison. I thought I would be listening to country and western music on their large stereos inside the confines of their small cell but instead heard loud pulsating American rap music. After a round of introductions, over loud music, I wished them well and went back to my room and gazed out into the large well-grassed oval. I was safe in the knowledge that should I have a long stay I would be made welcome within the close-knit circle of inmates from the Cape.

About half an hour had passed and by now I had a good knowledge of the grouping of prisoners from my cell window. The Cape York Peninsula men were congregated together and most of the others, black and white, were playing touch football. I also noticed a few loners walking around the oval and a few jogging. At a quarter to five I started to get worried that I might indeed be spending the weekend and maybe even longer at the Lotus Glen Correctional Centre as I had not heard a word on the outcome of my bail application. Up until this time I had not bothered to unpack my prison issues, wrapped in a blanket, in anticipation of being called to the Warden's office with news of my release. As the minutes ticked by and conscious of the five o'clock deadline for prisoner release fast approaching, when the front administration office shuts down for the weekend, I started telling myself to stop dreaming and to face reality. It was a sobering but painfully honest assessment of where I was located on that late Friday afternoon: incarcerated in Lotus Glen Correctional Centre.

Resigning myself to no news coming through I started to unfold the blanket knot at ten to five to commence the unpacking process to access my toiletries, when unexpectedly I heard the sweetest message I have ever heard in my entire life. The Warden's husky voice came perceptibly audible over the internal public address system with the emphatic message: '*Prisoner Stephen Hagan to report with his belongings to the front office'* (Hagan 2005 p. 171). My heart almost stopped beating as I regathered my possessions and hastily retied the blanket knot. I was overcome with emotion and felt a tear roll down my face as I shook the hands of my temporary roommate. The poor fellow thought he had gained a sensible roomy and now he

would have to wait for the next prison bus run from Cairns to find out if it delivered good or bad news for him of an inmate compatibility.

My legs felt like jelly as I made my way towards the Warden's tower and felt many envious eyes staring in my direction. They would have heard that familiar public address many times before and knew that it was the last day for that prisoner in their presence. Although in my case they had only seen me walk into their block just under an hour earlier. When I reached the Warden with the austere demeanour he briskly told me I was required at the main office and that it had something to do with my bail notice coming through. After the Warden released the door I walked compliantly through and along the left side of the yellow painted line in the hallway careful not to offend any over-zealous prison officials along the way. As I departed the prison wing and made my way along the uncovered concrete walkway to the main office I felt like skipping and shouting out loud '*I told you so*'. I dared not appear conceited, as I still had to be formally advised of the result of the bail application. If another ten minutes had lapsed during my stay I would have had to spend the weekend in prison irrespective of positive news forth coming.

I was introduced to one of the senior managers who said he remembered me from my last visit when I was the Manager of DEET and provided him with a grant for an adult education program. Now that most definitely was a visit under totally different circumstances, I might add. I vaguely remembered his face but waited patiently and submissively to be told of my release. I was not in the mood to reacquaint myself with past adult education courses and their successes. However, I was aware that I made a slight error in judgement with a prison nurse earlier in the day and I did not want to appear detached from his friendly engagement, as I was, for all intents and purposes, still a prisoner: an incarcerated subject.

I was eventually told that I was free and in fact should have been notified of the decision on arrival. He said I did not need to be processed and sent to the low security block. He also told me that one of the Indigenous counsellors had organised to give me a ride down the Kuranda Range to Cairns but had left after waiting patiently for some time prior to my arrival.

On completing my discharge papers the senior manager also informed me I had to make my own way into town unassisted by his office and with further bad news that the last bus into town had left moments earlier. He then promptly pressed some buttons behind his side of the counter that opened several doors for me to walk through. I tried not to worry about how I would get into the nearest town as I was more focused on stepping through the prison gates. The final barrier to my freedom was the high steel gate with razor-sharp wire on top. As I walked towards the final imposing gate I had an inexplicable feeling I would be called back to the office as something else had come up that would prevent my long sought after release. Every step I took without hearing a booming voice over the public address system brought an extra spring in my step as I knew I only had half dozen more to complete to secure my long awaited freedom. The huge gate was yet to be opened by the central controller and I still had several long steps to take. I kept asking myself, would I or would I not pass through that gate that would offer entitlement of choice devoid of control by others?

When I stepped through the gate I continued to walk, without looking over my shoulder, pass the visitor's car park and towards the road when I heard someone call out my name. For a second my heart missed a beat and I was tempted to make a dash into the high sugar cane fields to my left to escape the prison guard who called my name. *Now that's a stupid idea* I told myself as I imagined a sharp shooter positioned high on the prison tower shooting me before I could reach the field of sugar cane. I could hear the prison guard approaching fast from behind and started to prepare myself mentally for further bad news.

When I turned to surrender, to what I thought would be a hostile prison guard, I was pleasantly surprised to be greeted by a smiling face of the senior manager who had just completed the paper work for my release. He asked me to join him in his vehicle for the road trip to Mareeba, a thirty-minute hour drive from the prison. To me he was like a knight in shining armour to the rescue and as we drove silently away from the prison I became conscious of the sun sinking quickly to the west. Memories of my Cunnamulla days started flooding back as I knew I did not fare too well anywhere in the dark and most definitely not among the high sugar cane fields infested with one of the most venomous snakes in the world: the coastal taipan (Oxyuranus scutellatus).

As we drove in the direction of Mareeba I asked the kind senior manager of Lotus Glen Correctional Centre why he was providing me with transportation when he distinctively informed me five minutes earlier that he was, as a prison official, not permitted to assist prisoners with private transportation to town. He explained contentedly that he had remembered the excellent work I had done a year earlier, by funding the successful adult education course at Lotus Glen Correctional Centre, and also that he had been following my astonishing legal case in the media. He volunteered to me that he felt I had been 'badly treated by the justice system and should not have been convicted for such a minor offence' (Hagan 2005 p. 173). He also told me that he had contacted Rhonda on her car phone to tell her that she could pick me up at the Kentucky Fried Chicken (KFC) fast food outlet in the main-street of Mareeba instead of driving all the way to the Lotus Glen Correctional Centre.

I was moved by this gesture and impressed that he would defy official regulations to directly assist me with transportation into town. As we approached the Byrnes Street KFC outlet he asked me if I was hungry. I replied I was – as I had not eaten since lunch and was released before receiving prison dinner – and on hearing those words he opened his wallet and gave me his last dollar, a five-dollar note. I thanked him sincerely and made an improbable promise that I would repay him some day.

2.8.3 Free on appeal and legal reflections

I walked into KFC with my six-day's growth looking unkempt and a little suspicious I suspect and politely asked for a KFC combo meal. The young attendant said it was $5.95 for the fillet burger combo that included a drink of my choice. I asked her what could I order for $5.00 and I gathered she must have known I was very hungry, and demonstrating a degree of compassion not normally associated with a lot of young people in fast food outlets, offered me the combo for the price of $5.00. I told her I would pay the difference when Rhonda arrived. I gratefully accepted the can of Fanta that accompanied the burger and chips. I was not a bit concerned about the calorie count or what I looked like and promptly devoured the meal in haste.

As I sat alone by the window contemplating my release I suddenly caught, from the corner of my eye, a familiar sight of my brown Ford Fairmont pulling into a vacant parking bay in front of KFC. The most delightful sight in the world, Rhonda, was seated in the passenger side and her brother Bradley, a couple of years her senior, in the driver's seat. Rhonda's eyes had a steady flow of tears running down her beautiful face as we warmly embraced and before she could say a word I indelicately asked her if I could have a few dollars to repay the attendant at KFC. It was difficult for me to say the words that I wanted to say to Rhonda after six mentally tortuous days in a cell. I guess the desire to promptly pay the kind-hearted attendant that offered me a discount combo meal was the circuit breaker I needed, at least until I could speak alone with Rhonda later.

I walked confidently to the counter of the KFC outlet and paid the attendant the difference for the combo and a bit extra. After an exchange of 'you didn't need to do that' I warmed to her engaging smile and knew from the look in her eyes that she suspected I was a recently released inmate from the Lotus Glen Correctional Centre, a place synonymous with the township of Mareeba.

On the hour-long journey back to Cairns I thanked Bradley for staying with Rhonda and the children and for all the support he had given her over the week. I asked Rhonda how she was coping and how the kids had reacted to my forced absence. She replied that they were coping okay. *What else could she say*, I thought, after asking such an insensitive question? I guessed only partners, especially those with children, of prisoners would know the emotional roller coaster ride she would have been on for that duration. It is unfathomable to me the emotion a spouse would go through of someone they loved being removed from them for lengthy durations of a year or more.

I was so delighted to be driving in the opposite direction to the prison that I could not think of anything worthwhile to say as I took in the scenery, especially to Rhonda in front of her brother. The three of us engaged in small talk and the topic of my business venture, the Rainbow Serpent Cruises, broke the ice and took up a couple of extra nervous minutes off our time together as we slowly drove down the spectacular Kuranda Range.

When I finally entered our home and saw Stephen Jn. and baby Jayde they looked beautiful and happy but surprisingly did not seem troubled by my forced absence. Of course they would have been too young to be aware of my predicament and Rhonda would have protected them from discussions on the nature of my incarceration in the Cairns Watch House and Lotus Glen Correctional Centre, if friends visiting our house raised the matter. It felt extra special on this occasion to be able to hold both children unencumbered from the shackles of the incarcerated subject I had just moved on from and I gathered they were a little surprised with the overwhelming level of affection I showered on them.

I thanked my mother-in-law Mary for coming straight away when hearing of the devastating news. We did not go into any detail of the cause of the incarceration and after shaving and freshening myself up I sat down to my favourite dish of chicken curry and rice cooked specially by Mary. Rhonda's father is of Sri Lankan descent and her mother a Traditional Owner from Mamu country near Innisfail.

Rhonda and I had a long talk and cried together that night in the privacy of our bedroom as we tried unsuccessfully to work our way through the maze of political intrigue and deceit that led to my term of incarceration. The one person we held responsible for our predicament was the ultra conservative politician who held the safe seat of Toowoomba South, Mike Horan. Sure there were others such as Tony Hayes, Director, Internal Audit, Queensland Health and presiding magistrates on my court cases, Wessling and Pollock, but ultimately Horan was in a position to dismiss the charges when first raised and later when recommendations came through from Detective Mathews, CIB, City Police Headquarters, Brisbane and the Cairns Police Prosecutor, Sergeant Brad Hafner, at the first trial.

After a couple of days getting my thoughts and house in order I returned to work as an Executive Director of the Rainbow Serpent Cruises and was pleased to be back with my dancers on the black, red, yellow and green ex-Viking boat. The dancers were happy to see me and passed on messages of support from their parents.

A requirement of my successful bail application was for me to report to the City Police Station three times a week. Although I felt embarrassed having to go into the police station to sign a special register multiple times throughout the week, I did so without much fuss. Of greater concern to me was raising money to pay for my expensive legal representation for my appeal to the Supreme Court of Queensland. I made an offer to my business partners to sell part of my shares in the Rainbow Serpent Cruises and was fortunate in being offered a satisfactory price from my multi-millionaire partner from Singapore. The amount was sufficient to pay for the airfares, accommodation and fees to Brisbane for my solicitor, Matt McLaughlin, and fees for a prominent barrister, Tony Glynn, SC, in Brisbane to represent me.

In hindsight I was far too eager to take the advice to plead guilty and free service on offer by the local Aboriginal Legal Service (ALS) in Cairns than to insist on them fighting for my rights as a client who believed he was not guilty of any offence. Sadly the appeal process – should and when the guilty plea goes pear-shaped – is inordinately expensive. I now understand why many Indigenous people, without the means to raise money to contest a court conviction, have a criminal record or records against their names. As a victim of the 'plead guilty' edict that is more a norm than an exception for busy ALS, I now appreciate that it is not necessarily gullibility of the Indigenous client at play, but more so their impoverished status that forces their hands at that critical time of agreeing to plead guilty.

deKretser (2012) in making an informed observation as a lawyer for a top law firm asserts: 'All people are meant to be equal before the law, but the reality is that some are more equal than others' and those more equal than others 'tend to be the ones with the money to pay for the top lawyers to navigate a complicated and expensive legal system.' When deKretser changed jobs to offer his skills in a community legal centre he admitted there was enormous pressure to try and resolve things quickly: 'Every hour spent on one person's issue was an hour not spent with the next person trying to get in to see us.'

Anderson (2014) argues the disadvantage of pleading guilty is 'you may pass up a chance of acquittal' and it may 'suggest that you knew you did the wrong thing, and

so you are inviting a harsh penalty'. If I had known then what I know today I would not have entered into a guilty plea with the ALS.

Just prior to our first boat ride of the day on Rainbow Serpent Cruises I received a call on my mobile phone from my solicitor. Matt McLaughlin in good spirits announced that our Barrister, Tony Glynn, SC., was successful with the appeal hearing: a unanimous decision of the three judges. However he said the court ruled that the conviction was to remain unaltered. I did not quite know what the legal definitions were and found myself asking the obvious question: *was I to be sent back to prison?* He reiterated the court decision as read from the court documents.

The Supreme Court document (cited in Hagan 2005 p. 176) reads in part:

> In The Court Of Appeal
> Supreme Court Of Queensland — CA No. 442 of 1996
> CA No. 44e of 1996
>
> Brisbane
> [R. v Hagan]
> The Queen
> v
> Stephen Hagan
>
> Fitzgerald P.
> Thomas J.
> White J.
>
> Judgment delivered 15 November 1996
>
> … the total amount involved was comparatively small, the applicant obviously has a good work history as well as a previously unblemished record, imprisonment should only be imposed as a last resort and sentences that allow the applicant to stay in the community are preferable: see the sentencing guidelines in s. 9 of the Penalties & Sentences Act, particularly sub-s. 9(2)(a).

> In our opinion, the magistrate who sentenced the applicant on the second occasion erred when he ordered him to serve a period of actual imprisonment; especially having regard to the course adopted by the magistrate who sentenced the applicant on the earlier occasion, the proper course on the second occasion was to extend the term of imprisonment imposed – as was done – but to wholly suspend it.
>
> We would grant the applications for leave to appeal, allow the appeals and order that the sentence imposed on the applicant on 11 October 1996 be varied only by an order that the period of imprisonment be wholly suspended. Otherwise, the sentences should stand.

At that time I was just relieved to be a free man and asked my wealthy director from Singapore if he thought I should appeal the conviction. He informed me that in parts of Asia where he had business interest people went missing never to be found again when they naively got involved in politics at the corresponding level that I had been involved in. He suggested I enjoy my freedom and get stuck into business as a free man and make bucket loads of money. After discussing the issue with Rhonda she concurred with those sentiments knowing we did not have the financial capacity to appeal the conviction and added we should review it down the track when we were in a better financial position.

The following morning I went to the police station and handed them a copy of the *Cairns Post* with the heading of 'Jail sentence lifted for convicted fraud' (Hagan 2005 p. 177). The duty officer did not need to see any official documents from me on the Supreme Court ruling and was happy to accept the newspaper article before announcing that I was not required to report to the station again.

Soon after the decision was received our business started to decline as a result of an ineffective marketing strategy and a number of other factors associated with boardroom indecision. I felt I was deserting a sinking ship but I believe it was for the best that I seek another career change. It was not long after I sold my remaining interest in the company that bills started to flood our Cairns address rendering it patently obvious that our liabilities far exceeded our income. Rhonda and I agreed to

pack up and head to Innisfail to spend time with her mother on her block of land on the outskirts of town and to once again reassess our young family's future. Although we cherished the thought of not having to worry any more about legal challenges we did however have to plan our future together, preferably free of any politically inspired plots.

Rhonda and I had a long talk about our new predicament and decided the best option was to apply for entry to the University of Southern Queensland (USQ). I was also in regular contact with my parents and discovered that Mum's health was starting to deteriorate. The primary reason for me staying at my parent's boarding house in Brisbane, which became the subject of my criminal charges, was to be closer to my mother. I knew her health was on the decline back then and preferred to be near her in a boarding house she was managing with Dad than at a hotel in the city.

Months after I was released from prison I prepared a letter to the Criminal Justice Commission (CJC) detailing my dealings with the Coalition government officials asking them to investigate my *Allegations of National/Liberal Party Conspiracy*. I also sent copies of the letter with attachments to Peter Beattie, Leader of the Opposition.

On 3 February 1998 I received a letter from Rob Whiddon, Chief of Staff, Peter Beattie's office that read:

> We appear to have been remiss in not formally acknowledging the copy of your letter to the Chairman of the CJC Mr Frank Clair entitled "Allegations of National/Liberal Party Conspiracy" dated October 1997. This is to confirm that it was received in this office and noted by Mr Beattie. We would appreciate advice in due course as to whether the CJC proposes to take any action.

M A Barnes, for Chief Officer, Complaints Section, Official Misconduct Division, CJC, wrote to me on the 5th June 1998 after receiving my letter to the CJC Chairman, Mr. Frank Clair stating:

> … the matters raised had been investigated and the Commission does not intend taking any of the matters that you have raised any further.

I was most disappointed in the convenient response from the CJC and wished I had been as smart as the officials I had complained about, in justifying their actions, when the police first interviewed me.

To answer my vexed question of impartiality in my particular experience with the judiciary I have taken a quote from one of the leading experts on Indigenous imprisonment in Australia, Weatherburn and Holmes (2010), who propose four possible reasons for Indigenous rate of entry into prisons that tick all of my boxes.

> Indigenous offenders may be:
> * More likely than non-Indigenous offenders to be imprisoned if convicted
> * More likely to be convicted if charged with a criminal offence
> * More likely to be refused bail if charged with a criminal offence
> * More likely to be charged with a criminal offence (p. 561)

So faultless is Weatherburn and Holmes (2010) possible reasons for higher Indigenous rates of entry into prison I would incredulously suggest, if it was not such a serious and life-altering experience, that in my case the presiding magistrates Wessling and Pollock were reading from the Weatherburn and Holmes' 'Code for Aboriginal sentencing' book when they collectively gave cause for my period of incarceration.

Aboriginal people are often 'told to plead guilty even when we're not' by their legal representatives (Clausen 2004). I told my legal representatives that I was not guilty but was told by them that due to my unblemished record and professional vocation in life there would be no way a magistrate would impose a conviction if I were to plead guilty. My legal representatives were quite convincing and I took their advice literally. In hindsight that was the biggest mistake I have ever made in life. Black (cited in Auerhahn 2012) asserts that 'higher-status individuals are advantaged with respect to law and legal processes, as well as other forms of social control':

> They have great access to law as a means of furthering their own interests and are less likely to be subjected to law (or other means of social control) as a form of repression (p. 101).

His Honour Hulme J in R v KCH Ipp AJA, applying the decision of Meissner v R, (cited in Bickford 2011 p. 10) made the following comments about the conduct of lawyers who advise clients to plead guilty:

> It follows that legal practitioners who represent accused persons owe a duty to the Court not to bring improper pressure to bear on their clients to plead guilty … Such a duty is part of the general duty not to corrupt the administration of justice which in turn is derived from the public interest in ensuring that the administration of justice is not subverted or distorted by dishonest or negligent practices.

It troubles me immensely that some lawyers working for the ALS, and those from private practices that represent Indigenous Australians on a fee basis, easily adopt the position of insisting their clients plead guilty to charges before them.

As time passed on from my release from a period of incarceration and subsequent success on appeal to the Supreme Court, Rhonda and I received positive news simultaneously from the USQ, located in my parent's hometown of Toowoomba. Rhonda who had completed several years of a teaching diploma many years prior was about to embark on an undergraduate Degree in Journalism and I was about to do postgraduate studies in a Master of Business Administration Degree.

We bid farewell to Mary and family members and drove for two days to the renowned garden city of Toowoomba perched high on the Great Dividing Range, 700m above sea level. Rhonda, who lived her entire life in tropical North Queensland, immediately felt the cool temperature of high altitude Toowoomba, a constant 10 degrees Celsius cooler on most days of the year than her home in Innisfail.

My family and friends were delighted to see us healthy and in good spirits even though our bank balance had been severely depleted and the mental scars from our

political ordeal were still fresh in our minds. Dad had recently retired from the public service and returned home to Toowoomba with Mum whose health continued to cause him and the family great concern.

Rhonda and I were determined not to let our unmerited experience destroy us and valiantly sought ways of occupying our time in a new environment with new interests, new friends and new career paths. As far as we were concerned our children would be provided with every possible opportunity to develop their own personalities in a warm and loving home, devoid of any negative influence from us as a consequence of fallout from the Mundingburra ordeal.

Chapter 3: E.S 'Nigger' Brown Stand

3.1 E.S 'Nigger' Brown Stand – The beginning

After a short time finding our feet in Toowoomba Rhonda and I were keen to take the children to experience our favourite pastime of watching a game of rugby league. On our first visit to Toowoomba's premier football ground, Athletic Oval, to watch our talented nephews play, we first encountered the very visible and extremely offensive sign: the E.S. 'Nigger' Brown Stand emblazoned on the public grandstand. I sat with my wife in a state of utter disbelief as I tried to gather my inner most feelings about this public effigy to bigotry. After the game we both sat down and had a long discussion about our experiences on that day and agreed we would not subject our children to that overt display of racial insensitivity and superiority, on the part of the Athletic Oval Trust who administer the sporting facility.

Just when I thought it would be great to blend into my new environment and maintain a certain level of anonymity amongst students at the university I was once again on the verge of being embroiled in a new controversy of international proportion. With Rhonda's blessing I made a commitment to fight the Toowoomba Sports Ground Trust (TSGT) over the maintenance of a racist epitaph: the E.S. 'Nigger' Brown Stand sign.

Several days after the game I attended a Multicultural Day Committee meeting where I had a detailed discussion with the President, David Curtis, a solicitor, and a friend who I had grown to respect for his pro-active stance on multiculturalism and Indigenous Affairs. He said he was offended by what I had told him but had not attended a footy game and therefore was not aware of the sign. It did not take long for Dave to drive pass the Athletic Oval to confirm for himself the boldness of the sign.

David cautioned me against taking on the TSGT saying that after his experiences with racism in this area it would be like taking on the world: a David and Goliath scenario. David suggested I talk to Councillor Di Thorley who he believed was a member of the TSGT. I took David's advice and spoke at length to Alderman Thorley about the

offensive public signage. Alderman Thorley told me she was the first female appointed as a member of the TSGT. I told her of my concern at the use of this offensive name on the grandstand and asked for her assistance in lobbying her fellow board members in having the sign removed permanently. Alderman Thorley told me she was offended by the use of the N-word and that she had raised this concern when she attended her first meeting. She suggested I write a letter to the TSGT expressing my concerns. I did so and addressed the letter to John McDonald, Chairman, TSGT.

> I write to request that you and your board take immediate action to have the E.S. "Nigger" Brown Stand public sign removed from the grand stand at the Athletic Oval complex.
>
> I personally am offended by the name whenever I attend football matches at the ground…
>
> I would like to think that in these enlightened times your committee would view the display of such an offensive sign, identified above, as being outdated and in urgent need of change.
>
> I wish to make it very clear to your committee that I have the greatest respect for the sporting achievements of Edward Stanley Brown and also wish not to offend his family. However I am very serious in seeing a positive outcome to this rather protracted public debate.
>
> I thank you and your committee for your attention on this matter and look forward to hearing from you soon.

I dated the letter 23 June 1999 and sent a carbon copy to Cr. Dianne Thorley: care of the Toowoomba City Council.

A couple of weeks later I received a copy of the Special Meeting at the Athletic Oval of the Toowoomba Sports Ground Trust held on the 8th July 1999 at 5.30 p.m.

Attendance: John McDonald (Chairman), Reg Murphy (Secretary), Randy Krause (Treasurer), Ian Knight, Col Fallon, Deanne Thorley, Cr Joe Ramia (Mayor's proxy). …by invitation TRL Ltd Management Board, Mick Patterson (Chairman), Judy Sparksman (Secretary), Ron Cornwall (Financial Director), Directors Mark Philipson, Peter Oakes, Alf Smerdon.

Item 5 on the minutes read:

Letter of complaint from Mr Stephen Hagan re: "ES Nigger Brown Stand"

> A letter of complaint from a Mr Stephen Hagan was presented to the meeting. Mr Hagan requested the Trust to take immediate action to have the word "Nigger" removed from the "ES Nigger Brown Stand" public sign at the Athletic Oval. He stated he was personally offended by the name when attending football matches at the ground. He stated he had the option of lodging a complaint under the Racial Discrimination Act 1975, Section 18C, with the Human Rights and Equal Opportunities Commission.

It was moved by Dianne Thorley and seconded by Joe Ramia, that Mr Hagan's letter be received.

Carried

> After discussion it was moved by Ian Knight and seconded by Dianne Thorley that a letter of reply be sent to Mr Hagan thanking him for his letter dated 23rd June 1999 and received by us on the 8th July 1999 requesting the removal of the word "Nigger" from the sign and to inform him that all members of the Trust regret that he is personally offended by the name when attending football matches at the Toowoomba Athletic Oval. However, based on representation and responses made by numerous indigenous people to all members of the Trust, the Board unanimously resolved that no further action be taken.

It became patently obvious to me, after reading the minutes, that Alderman Thorley had jumped the fence and with her eye on the next election I believe she felt it was a

stronger bet to be seen siding with conservative civic leaders than a lone black activist supported by a couple of left wing non-Indigenous folk of no apparent worth.

The decision says to me that my rights are less important than that of the white Toowoomba establishment and the Brown family who chose to preserve tradition by the continued use of this racist epitaph. This offended me greatly.

I believe there was a concerted effort by the TSGT to discredit my position by enlisting the public support of prominent Aboriginals through the media. This strategy of recruiting Indigenous support was on the nose to me and smelt very much like the old colonial days of divide and conquer. It was obvious the Toowoomba civic leaders were well versed in this tactic. For this strategy to work there had to be willing participants from the Indigenous community. To my surprise my adversaries from Bowen Street, who had difficulty with my public call when I first arrived in Toowoomba for accountability and transparency with government funding of Indigenous organisations they represent, were first in line to join the white civic leaders in the campaign to maintain the word Nigger in the E.S. 'Nigger' Brown Stand. Significant numbers of concerned Aboriginal community members asked for my help soon after I arrived on the Darling Downs – aware of my pro-active stance on social justice – in gaining access to housing, legal and other respite from those organisations in Bowen Street established to represent them on those matters.

What appeared to be a straightforward fight along racial grounds took on a totally new façade. The union of black and white people who would not normally say hello to one another on the street made my task so much more challenging.

With renewed vigour the TSGT declined my request to take the name down and spoke with pride of the support gained from consultation with Indigenous people.

Headlines in the Toowoomba *Chronicle* and most national and a few international papers carried headlines such as: *'Nigger' known by no other name* (Smith 1999 p. 3):

> The Toowoomba Sports Ground Trust has held out against the forces of political correctness and booted into touch an attempt to change the name of its

> controversial "Nigger" Brown Stand. Steve Hagan, a prominent member of Toowoomba's Aboriginal community, had requested the trust remove the word "Nigger" from the grandstand because of its racist overtones.
>
> However, trust chairman John McDonald yesterday said his committee had decided no change would be made because the footballer after whom the grandstand was named, 1921-22 Kangaroo centre Edward Stanley Brown was never known by any name other than "Nigger". "We regret if Mr. Hagan is offended by it, but we also have had a lot of support from other members of the Aboriginal community who are not offended by it." Mr McDonald said.
>
> The word caused Great Britain's former black captain Ellery Hanley to raise his eyebrow in dismay when he saw it before one match in Toowoomba, but Mr McDonald said he had received no complaints from Aboriginal footballers who regularly play there.

As promised in my letter to the TSGT I lodged a complaint to the Human rights and Equal Opportunity Commission (HREOC) (Case 2009) on the 13th July 1999. I filled in a complaint form and stressed that I was personally offended by the public display at the main sporting complex and that I request the offending word be removed from the sign in question and a public apology given. I added that I would be happy if the name was altered from the E.S. 'Nigger' Brown Stand to the Edward Stanley Brown Stand or E.S. Brown Stand.

The TSGT directors, in particular John McDonald and Di Thorley, chose to defend the contemporary usage of the contention sign no matter the cost; a clear sign of whiteness (Moreton-Robinson, Casey et al. 2008) that a senior sports official and mayor would not concede a point made by an Aboriginal activist. 'Whiteness is not cool, it is not on the right side of history,' asserts Alcoff (2015 p. 9) 'and it is associated with many troubling dispositions, most importantly racism.' Sadly, McDonald and Thorley, hiding behind the cloak of a false alliance with Indigenous leaders, dismissed any claims by me that our public stoush over the N-word had its foundation in race.

Their ingenious strategy of recruiting Indigenous people to go public in support of the retention of the offending name proved very effective in winning over the public. It saddened me that Indigenous people, notably Arthur Beetson, Walter McCarthy and Dick Rose, were prepared to take sides on what was obviously a clear-cut case of racism at its worse (Austin and Hickey 2007, Hagan 2007).

Beetson admitted that he 'grew up with a lot of racism' and as far as name calling on the football field goes 'it was tit for tat, it was fair game' (Jancetic 2009). Some of his opponents on the playing field would have uttered the offending N-word with intent with the strategy of putting him off his game. Like many rugby league pundits Visontay (2011 p. 68) saw Beetson as a leader from the time of 'his resurrection as a player for Easts gave lie to the existing stereotype of Aboriginal league footballers as gifted but inconsistent, and unable to overcome adversity. Beetson transformed himself from an overweight, ill-disciplined youngster into a role model of the highest standard'. It therefore came as a total surprise when I read in *The Toowoomba Chronicle* editorial (Hagan 2005 pp. 196-197), Beetson's woeful attempt at dismissing the word as inoffensive:

> "I just can't believe it." Mr Beetson said yesterday.
> "I have heard about it and I'm absolutely amazed.
> "I don't know what's going on in the world. I don't have a problem with it and when I read about it I found it quite laughable." …
> "I've got mates with nicknames like coon and things like that and they don't worry. Soon I won't be able to call them anything".

Many local black and white people commented to me that they saw Beetson's comments in the context that that he was simply going to the aid of an old footy mate caught up in a bit of racial strife. Beetson and John McDonald played together for Australia and Beetson was captain when McDonald was coach of the inaugural State of Origin game played between Queensland and New South Wales at Brisbane's Lang Park in 1980 (Cadigan 2011).

I saw things a little differently as I turned from an admirer of Beetson to one of his harshest critics: a man who I believe sold out to his people to appease his white

football mates. I would find it hard to believe that an Aboriginal person of my age or older would have gone through life in Australia without being called the N-word by white people; in the schoolyard, on the sports field, or at a social function. The exception perhaps would be those who look white – having fine European features – or were mistaken for another race, such as an Italian, Greek or Indian.

Why did 'Nigger' and the race issue take hold so quickly in Toowoomba? I was shocked initially by the swiftness of the media attacks on me and surprised at the broad acceptance by the public of the position adopted by the TSGT to retain the E. S. "Nigger" Brown Stand sign. A couple of years after I commenced my legal campaign on the N-word controversy I read with interest the parallel demographics between the composition of Toowoomba's conservative population and the demographics of voters who elected Pauline Hanson into public office as stated by Andrew Markus (2001) in his book, *Race – John Howard and the remaking of Australia* when he said:

> Hanson's appeal has been strongest in communities distinguished by a number of common characteristics; relatively small numbers with tertiary qualifications, low median family income, high number of children under the age of five, high unemployment, and residence beyond inner urban areas.
>
> A relatively high number of indigenous residents was an important distinguishing characteristic of strong One Nation support in some but not all regions, as was limited contact with immigrants from a non-English speaking background, especially from Asian countries.
>
> Hanson was most popular among those aged between 45 and 64 and among men. One Nation scored its lowest vote in the most affluent electorates (pp. 204-205).

Just when I thought things could not get any worse after attacks from the Editor of *The Toowoomba Chronicle* with front page coverage of Walter McCarthy and Arthur Beetson, along comes an Indigenous community meeting supporting the decision of the TSGT. I thought how ironic it was that the rallying meeting in support of the TSGT was held at the same venue, Bowen Street, which houses most of the major

Indigenous organisations I criticised previously, for being secretive about the way they used tax payer funds to run their programs for our people. Two adjacent buildings, owned or rented by Indigenous organisations in Bowen Street, housed the Land Council, Legal Service, Child Care Agency and the Housing Company. When John McDonald and Di Thorley sought support from Indigenous people against my complaint to HREOC they were warmly welcomed at Bowen Street.

The meeting took place on the 29th July 1999 and was attended by thirty-five people. The media report referred to a community meeting but in fact it was a gathering of slighted staff, relatives and friends aligned with Indigenous leaders working out of premises in Bowen Street. Most of those people, possibly with the exception of renowned activist Bob Weatherall, had not actively sought to go out on a limb to change the status quo within the community they lived. Most were in a comfort zone and would rather nod to their oppressors than to challenge them for social justice or equality for the people they are supposed to represent. More than half the people credited with contributory opinions at the meeting were married to non-Aboriginal people. These so-called black leaders had come to accept the normativity of whiteness; of putting up with blatant racist jokes shared by their white partners in the company of their white relatives and associates out of fear or necessity to avoid marital issues.

After several weeks of anxiously waiting I finally received a response from the HREOC to my letter of complaint about the use of the N-word on the E.S. 'Nigger' Brown Stand. The HREOC informed me that they were sending an experienced conciliator to Toowoomba to convene a meeting of the parties. The meeting was scheduled conveniently at the Mayor's office. Di Thorley had graduated from local councillor to the position of mayor since my public campaign commenced.

In attendance at the conciliation meeting were John McDonald and Di Thorley, representing the TSGT, and my good friend David Curtis accompanied me as my observer.

I will always remember that day for what did not happen. To me it was a sad day as it was a day when the offensive and antiquated N-word could have been erased from the

vocabulary of its townsfolk when referring to that sign. This could all have happened in the spirit of reconciliation and the defendants, Thorley and McDonald, could have gone down in history as progressive civic leaders who had the foresight and strength of character to make the hard call and lead the town's population into an era of cultural inclusivity, respect and tolerance. Instead they chose not to budge on their recalcitrant position of keeping the N-word on the public sign. David and I and our leaderless community of Toowoomba were given in its place bigotry and intolerance and a redneck city-label the likes of only the population of Alabama in America's Deep South would be familiar with.

After many weeks of waiting and not quite sure what the experienced conciliator from HREOC would say about our meeting I finally received a letter in the mail with a strange message. On the 13th April 2000 I read with interest the comments from the legal Section of HREOC.

Dear Mr Hagan

Stephen Hagan v Toowoomba Sports Ground Trust
Complaint under the Racial Discrimination Act

I refer to the above complaint lodged under the Racial Discrimination Act.

As you are aware, changes to the law administered by the Human Rights and Equal Opportunity Commission came into effect on 13 April 2000. Although this complaint was referred to the Commission for inquiry prior to 13 April 2000, a public hearing into the complaint has not yet commenced. In these circumstances, the new law states that the complaint must be terminated.

I enclose with this letter the **Termination Notice** issued by the Delegate of the President. The new law states that once this complaint has been terminated and you have been provided with the Termination Notice, you may make an application to the Federal Court of Australia for the Court to hear the complaint. Information about this process can be obtained from the Federal Court Registry in your State or Territory.

If you wish to make an application to the Federal Court you will be required to produce the enclosed Termination Notice and the document attached to it. You must make the application to the Federal Court within **28 days** of the date of issue of the Termination Notice.

If, after contacting the Federal Court, you require additional information about this matter, you may contact the Legal Section Information Officer.

Yours sincerely

Legal Section

As I turned the page the termination notice jumped out at me and I knew the time had come when I had to make the decision on whether I would proceed with the matter before the Federal Court, or ignore the letter and regain a level of normality to my life.

I sat down with Rhonda and discussed the termination letter. I told her that I hoped a specialist Commissioner would hear the matter before the 13 April 2000 deadline as the Conciliator, who attended the Toowoomba hearing, had deemed the complaint to have merit. Unfortunately that was not to be and I told Rhonda that I thought it was a deliberate attempt on the part of bureaucrats to place my complaint in the too hard basket. I also thought at the time that they were well aware of my status as a struggling student and assumed I would not have the means or know how to pursue the matter through to the Federal Court.

Rhonda gave the matter a lot of thought, knowing how passionate I had become about erasing that offending word from the public sign, and gave me her consent to take the matter to the next level. I was not quite sure what the next level was except that it would cost a little more than the 45c stamp it had cost me to have my complaint formally assessed by HREOC. I did not know the first thing about making an application to the Federal Court nor did I know the process.

As the days passed rapidly by and with my eyes firmly on my USQ study calendar I became conscious of the 28-day deadline to make an application to the Federal Court. I knew that if I were to advance this complex case I would have to find a solicitor to undertake the legal preparation and to do it soon. The biggest problem with accessing legal counsel was that I did not have any extra money – as my wife and I were still full-time students – to make myriad phone calls to law firms in Brisbane to discuss the complexities involved in undertaking the case of this nature. The second biggest problem was trying to convince a reputable law firm to do it free of charge.

After much searching I was referred to and finally met the affable lawyer Peter Black (Willheim 2003), of Greek descent, who was happy to take on my case on a pro bono basis: no-win-no-fee. Peter informed me when we met that he 'experienced discrimination at school where he, like others, was labelled a "wog", "dago" and "wop"' (Hagan 2005 p. 202). Peter said that unless you have been subjected to racial taunts you would not know how serious it is. When the E S 'Nigger' Brown Stand issue arose Peter embraced it because he knew immediately what I was talking about. He saw that the cause was just and right and that the law of the ignorant politician manifest in the racial vilification sections of the Racial Discrimination Act were ineffective and needed to be made just and right. He said the fact that E. S. Brown may not have felt offended was irrelevant.

Peter never discussed money with me and yet he devoted countless hours working around the clock to prepare applications to the Federal Court and the High Court of Australia and the United Nations on appeal to meet their stringent deadlines. After many failed attempts at securing the services of a barrister through phone conversations and face to face meetings Peter sought a favour of a fellow Greek barrister who specialised in civil law: in particular commercial patent (copyright). Dimetrios Eliades was a very smart man and with Peter's assistance, prepared what I thought was a first-rate attempt at addressing the relevant sections of the Racial Discrimination Act to win our case.

I began to get a little excited and at times experienced tinges of anxiety as the date for the Federal Court hearing approached. I knew I would have to give evidence and worried about how I would cope, given my passion and hatred of the N-word. I also

shuddered at the thought of being in the same room as some of my adversaries from Toowoomba: both black and white. I knew beforehand that John McDonald, Chairman, TSGT, would not be present in the courtroom as he was in England attending a rugby league test match between Australia and the mother country in his capacity as Chairman of the World Rugby League Association.

3.1.1 E.S. 'Nigger' Brown Stand – Federal Court

On the morning of 6 November 2000 I met in my barrister's chamber at the Inns of Court with Peter, and junior legal staff from his firm including a lawyer and legal secretary, to go over finer points of law in which the case would be argued. As we walked along North Quay, in the direction of the Commonwealth Law Courts, we were relaxed and tried to engage in small talk about the weather and other news items, excluding the biggest news of the day: the E. S. 'Nigger' Brown Stand court case.

If we thought the matter was low key to commence with we were rudely awakened when we turned up Tank Street from North Quay to the Commonwealth Law Courts. Awaiting us was a media scrum the likes of which I had never seen before and definitely my legal team have not had to work their way through before. 'How do you feel Mr. Hagan? 'Do you think you can win Mr. Hagan?' 'What do you hope to achieve today?' Although Peter advised me not to make any comments I felt compelled to speak to the media (Channels 10, 9, 7, SBS, ABC, and many radio stations) as they had followed the story and wanted a grab for their afternoon or evening news. I told them I was deeply offended by the word Nigger and was sure Justice Drummond would support our application and order the removal of the racist sign. I was quietly confident that Justice Drummond would support my legal team's argument in a fair and reasoned manner. I formed this position for no other reason than the fact that the word was racist and antiquated and ought to be removed from public view.

Unfortunately what I saw positioned in the highest seat in the room was a judge who was uncompromising and stern in his handling of my case before a packed courtroom. He certainly did not present an aura of congeniality, which, in past history of dealings with men in authority, was a sure sign that the outcome was not going to produce a

pleasing result. I was the only witness for my team whilst the defence paraded Mayor Di Thorley and former Indigenous Toowoomba rugby league representative captain Dick Rose as their principal witnesses.

Time went so fast in the courtroom that it was not long before my name was called and I suddenly found myself facing a sea of curious spectators in the gallery as I took the oath and my seat to the left of Justice Drummond. My barrister asked me to tell the court in my own words why I chose to take the matter to court in the first instant. I told the judge I was disturbed by the physical presence of the sign and of the audible ground announcer's commentary over the loudspeaker system to the name whenever a try was scored or goal kicked at the 'Nigger Brown end of the ground'. I told him I was also concerned for my children and the message it was sending other youth in attendance of a grossly offensive word being normalised by its striking appearance. The next thing I remember was taking my seat and instead of facing the packed courtroom I was now staring anxiously at the judge. I could not gauge from his body language which way he was interpreting the law but it became a lot clearer as the case progressed.

Thorley and Rose almost repeated word verbatim that the Indigenous community meeting gave a clear mandate to the TSGT to retain the sign as is, as it did not offend them or the Aboriginal community they represented. They failed to tell the judge that thirty-five people called to a meeting on the morning of its announcement, from representatives of organisations in Bowen Street, did not constitute a legally advertised and convened meeting. Their legal team, headed by barrister Dan O'Gorman, pushed home the fact that Rose and other community leaders in attendance at the community meeting were not offended by the sign and therefore it should stay. He also identified Arthur Beetson as another creditable Indigenous sportsperson who did not take offence to the word 'Nigger' in the sign.

Justice Drummond asked my barrister if there were any other Indigenous people other than me who were offended. Dimetrios Eliades said there were many who have expressed offence at the public display of the sign and had offered their support to me. However the judge was taking evidence before him literally and commented that in our submission there was no witness identified other than me. My barrister argued

that one could assume that there would be many others who would be offended and asked if we could adjourn the case in order for his legal team to provide him with a list of Aboriginal people who were likewise insulted by the sign. The judge's response to my barrister's request to adjourn the hearing made me realise that it was all over and that I had better get my thoughts together for my long walk of despair through the media scrum outside the court.

Justice Drummond declined the request and said my legal team should have been more organised with the inclusion of those details in our submission. My barrister said under the act it was not necessary to demonstrate that more than one person was offended to meet the criteria of Section 18C of the Racial Discrimination Act. The judge thought otherwise and shocked the full house with an example he gave in which the word 'nigger' could be used and not be considered offensive. He made mention of 'nigger head reef' (Hagan 2005 p. 208) and said that fishermen used the word without taking offence. Watts (2011) notes 'nigger head' reef found in Shelburne Bay in north Queensland 'is so named because it is an isolated coral outcrop; such outcrops were previously known as Niggerheads by British sailors'. But unlike the name of the reef in north Queensland, Watts (2011) also makes reference to Niggerhead Mountain in Los Angeles County, California where, 'Thanks to the work of a Moorpark College history professor, a Southern California mountain will be renamed to honor the man who first settled in the area and erase the original racial slur'.

Justice Drummond used his white privilege in using the law, as Dorsey and Chambers (2014 p. 62) argue 'to establish and protect an actual property interest in whiteness'. One does not need to be a Rhodes scholar to detect the racist inference of the offending term 'nigger head reef', and yet it is the very word to describe – among a raft of other place and object names here and abroad – that Justice Drummond conveniently use to inventively and lazily dismiss my application. The court case was set down for two days but finished before lunch on the first day as Justice Drummond departed the courtroom. I asked my legal team 'where to from here' and they promptly informed me Justice Drummond reserved his decision and would notify us when he had made his determination. They said it could take a day or a week or even a month and added that I would need to remain positive.

As I left the Commonwealth Law Court and walked towards the media assembly I kept saying to myself to hold my head high and be upbeat about what I was about to say. I could not help myself as the first comment I made was about "*nigger head reef*' and I attacked the judge for making such a feeble analogy of a word so offensive to me that I found it difficult to repeat. I told them I was not optimistic of a positive outcome and thought Justice Drummond had not provided my barrister with a fair hearing. I told them if we were to lose the case I would immediately appeal the decision to a higher court.

A week after the court case I attended a national Community Development Employment Program (CDEP) conference in Canberra in my capacity as the interim Coordinator of the Toowoomba Aboriginal Corporation for CDEP, a job I was appointed to in recent weeks. It was at this meeting at the Australian National University where I met eminent constitutional barrister Ernst Willheim who I was fortunate enough to co-opt onto my legal team. Ernst said he was following my case with interest and was happy to accept my invitation for him to join my legal team on a pro bono basis and for me to organise for Peter to update him with legal documents filed to date.

On the 10th November 2000 I received a call from Peter saying that Justice Drummond was about to hand down his decision and to prepare for the worse. Peter was correct as Justice Drummond publicly released his decision within twenty minutes of his telephone call. *Nigger on the Grandstand wasn't offensive and should stay* was the central theme of most news coverage of Justice Drummond's decision as it echoed around the nation and abroad. In Justice Drummond's (2000) 15-page decision that contained 43 paragraphs my fate was clearly spelt out in the last paragraph:

> Even if, contrary to what I believe to be the case, the act of the trustees can be said to have been based on race, that can be so only in the sense that racial considerations provided the, or at least one motive, for the doing of the act. But since those racial considerations were taken into account to satisfy the trustees that maintenance of the sign would not give offence to Aboriginal persons generally, as distinct from offence to Mr Hagan personally, it cannot be said

> that the act, even if based on race, involved any distinction etc having either the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom of the kind referred to in s 9. Only Mr Hagan's personal feelings were affected by the act. Because there was no distinction etc produced by the act capable of affecting detrimentally in any way any human rights and fundamental freedoms, there was no racial discrimination involved in the act.
>
> The application is dismissed.

Justice Drummond used the small vocal minority of no more than 35 local Aborigines as the main reason for striking my application out. There were no advertisements for the meeting and the record of the minutes does not list those in attendance nor do they mention any objections or abstention to the resolution to retain the sign. I was appalled that the old tried, tested and proven whiteness 'divide and conquer' (Pickering 2014) policy was back in vogue to gain an ascendency over me, a so-called troublesome black.

The Toowoomba Chronicle (2000) of November 14 ran a story quoting the State Member for Crows Nest, Russell Cooper MP, saying ATSIC was bankrolling my case. Russell Cooper, it would appear, was using the media in an attempt to put me in my place. Aboriginal people are supposed to be too poor to pursue an issue to the highest court and so the preparedness of my legal team headed by Peter Black and Ernst Willheim to act pro bono added to the high level of resentment of me. It was part of the challenge to the white social order that many found unfathomable. Most likely in Russell Cooper's lived experience local blacks never sought legal recourse to a higher court in pursuit of justice. By now I was starting to really frustrate prominent civic leaders and I viewed Russell Cooper's entry into the debate as a sign of mates coming to the rescue of buddies in trouble.

Russel Cooper, using his column in his local Crows Nest paper, COOPERS CORNER, raised doubt over the funding of my campaign:

> The absolute and total rubbish going on about the E.S. "Nigger" Brown grandstand in Toowoomba is enough to make you want to throw up. It is a stunt to be sure but I'll bet it is an expensive stunt. I wonder who is paying the cost of the legal fees, which must be horrendous. (Cooper 2000).

When it became clear that I was going to take the matter further the personal attacks on me surged. I reasoned I just did not fit the mould of a good little black boy that powerful civic leaders around the country required from their version of an assimilated Aboriginal. That just was not going to happen in my case despite the best efforts of the government when they introduced, and tried to enforce, assimilation as a policy back in October 1951, eight years before I was born: '…accepting the same responsibilities, observing the same customs and influenced by the same beliefs as other Australians' (Woolmington 1991 p. 26).

3.1.2 E.S. 'Nigger' Brown Stand – KKK and community reaction

The Ku Klux Klan (Selepak 2012, McVeigh, Cunningham et al. 2014), or those presuming to represent that repugnant movement, was mounting vicious attacks on me with threatening hate mail while the black and white fans who had no issue with the N-word, were doing their best to discredit me within the Toowoomba community. However, post Justice Drummond ruling I started to receive support at a more vocal level from various quarters that gave me that little bit of inspiration I needed to keep me focused on the appeal.

The family, although stalwartly supportive of me, was growing wary of the increased personal attacks I was receiving and worried for my safety. I kept asking myself if it was all worth it and whether I should call it quits as no one likes to see their family come under serious threat of physical harm. If Rhonda had told me enough was enough I would have walked away from the associated pressure of the David and Goliath battle that I found myself becoming immersed in and consumed by. I knew the decision of Justice Drummond ensured the task ahead was going to be a mammoth struggle for my legal team, as judges in a higher court hearing my appeal would need to be presented with clear evidence of serious flaws in the original judgement for them to even consider upholding the decision.

I thought long and hard about what road my father Jim and his father Albert would have traversed if faced with such insuperable pressure being exerted from many sources and I knew then that there was only one way to go and it was not the road of quitters. As I pondered the future I thought of a saying I received from my father when I was younger: *A quitter is not a winner and the winner is not a quitter*.

Throughout my campaign I kept asking myself questions about the motives of my foes. What is it that makes some white people feel so threatened by a black person wanting to pursue social justice? What is it that also makes some black people feel uncomfortable about a fellow black person making legitimate calls to correct socially unjust practices? I found these personal questions difficult to answer but in the end I made a prediction to myself that those individuals would one day be brought to task by their equals or subordinates on their outmoded stance. I am sure when the dust has settled long after the legal chapter has closed on the N-word saga my black adversaries will be queried on their unusual allegiance with supporters of the repulsive word by their children and grandchildren.

The increase in publicity to my cause, especially positive publicity, sparked an exponential rise in intensity and regularity of hate mail and personal attacks against me. So concerned was I for my immediate family's safety that I started reporting disturbing threats to police. I had an arrangement with Queensland police, whenever I received suspicious looking mail, that I would grasp the mail with a tissue or handkerchief and without opening it place the envelope in a plastic bag and contact them. It is my understanding the suspicious letters were sent away by police for fingerprinting and other forensic examinations such as checks on handwriting as well as paper and computer make and model used in their production. The letters included similar sinister tones and came with white pride white power words under the figures of hooded KKK images. I did, however, take those sinister threats from unestablished sources seriously and believe the police also undertook thorough analyses of the threatening letters as there were known KKK clusters in and around the Darling Downs.

I recall my sister Pam telling me of an experience she had at the Ruthven and Margaret intersection traffic lights in the centre of Toowoomba. Pam told me she was alone in her car and had a strange, almost fear-provoking sensation come over her by the presence of a vehicle that pulled up beside her at the red light: 'I didn't want to look but the sensation was such that I couldn't help myself and glanced slowly to my right' (cited in Hagan 2005 p. 231). What she witnessed next left a lasting impression on her. Pam told me two skinheads in their hotted up old car were sneering at her and the one closest to her rolled up the sleeve on his long shirt and revealed a swastika and in a deliberate intimidating motion pointed to it.

Although my sister did not say in so many words, I believe the spine-chilling silent action of the skinhead was as powerful and effective as a tirade of racist abuse one could possibly experience, other than a physical assault. As many minorities who have had first-hand experience would concur, callous skinheads tend to pick their mark and intimidate defenceless individuals or small groups of people they know would not strike back (Gregory 1965, Kennedy 2003).

My efforts, despite negative energy around me in public life, at this stage was focused entirely on preparing for my appeal to the Full Bench of the Federal Court, with my legal team, against a decision of a Federal Court judge who had a partiality for *nigger head reefs*. I thanked my previous barrister, Dimetrios Eliades for his efforts in the first case and he agreed, with Peter and me, that we would need an experienced constitutional barrister if we were going to successfully appeal Justice Drummond's decision. Dimetrios was a gentleman and I am grateful for his contribution especially when he was doing it as a favour to a fellow Greek legal colleague free of charge. There were no hard feelings from Dimetrios and he happily offered his impressive chambers overlooking the Brisbane River to Ernst whenever he was in Brisbane.

Ernst was a Canberra lawyer, specializing in constitutional law, international law and human rights. He worked at the Law Program in the Research School of Social Sciences at the Australian National University and for the Commonwealth Attorney-General's Department from 1967-1998. Ernst told me he was born in Sweden and came to Australia in 1948. His father had been a prisoner in two notorious Nazi concentration camps: Dachau and Buchenwald (LopiČIĆ 2012). It was not until Ernst

visited Austria as a young man that he learned of some of his father's heroism in the concentration camp, such as risking his own life by interposing himself between SS guards and an elderly man who was being beaten to death because he was too weak to meet his work quota. No doubt it was that family background that engendered Ernst's strong personal commitment to human rights and social justice.

3.1.3 E.S. 'Nigger' Brown Stand – Full Bench of Federal Court Appeal

After weeks of consultations Peter and Ernst finally sent me a copy of the appeal they had signed off on. After reading the appeal I knew that Peter's task had been made much easier the second time round with the wealth of knowledge and vast experience in the area of constitutional law that came from Ernst's writings. In the weeks that followed a petition was signed by over three hundred people from many walks of life as well as many Aboriginal people from Toowoomba and throughout the country. Peter and Ernst submitted the petition along with the appeal documents, as they knew the three Federal Court judges would read the petition, although technically it would not be accepted, as it was not tendered in the original trial. We thought an application to include additional evidence was worth a try.

I still recalled how Justice Drummond spoke scornfully to my barrister in the first trial as if he was a mischievous primary school student who forgot his homework. It was not that we forgot to submit names of other people or groups who were equally offended as myself to the N-word as it was our understanding, of the RDA, that an individual only needed to be offended to satisfy the Act.

Costs were always a worry to me as I never in my wildest dreams expected this matter to advance pass my initial application to HREOC for it to be resolved without the need for litigation.

It was with renewed confidence that I approached the appeal before the Full Bench of the Federal Court. I believed my chances were enhance by the fact that two of the three judges would come from interstate thus ruling out a perceived bias on my part of Queensland judges appointed by the ultra-conservative National Party Bjelke-Petersen Coalition administration from decades prior ruling adversely on the appeal.

On the day of the court case the legal team plus support staff met in Ernst's borrowed chambers at the Inns of Court. After an hour of refreshing the legal elements of the appeal we gathered our brief cases and walked in unison to the court. By now everyone except Ernst anticipated the media scrum that would greet us, as we walked towards Tank Street to enter the Commonwealth Law Court. The team had a wry smile on their faces when Ernst asked me if I expected any media to be standing outside the court building. That question was answered as soon as we turned into Tank Street and were descended upon by television and radio journalists as well as still photographers anxious to capture the moment for their respective agency.

Drew Hutton, then convener of the Queensland Greens and a large number of his followers, were also present at the courthouse holding up a huge banner in support of my campaign. To his left were some musicians joining in to support me with their protest actions. As usual I obliged the media with expressions of confidence and praise for the good work my legal team had put into the appeal.

Inside the courtroom I saw a lot of familiar faces including academics, social justice advocates and grass roots people wanting to lend their support and to experience the legal debate about to take place. I sat anxiously waiting for court proceedings to commence and observed my legal team making their final preparations with notes and law books laid out across their bench. The clerk of the court signalled the arrival of Judges Ryan, Dowsett and Hely and the appeal of *Stephen Hagan v Trustees of the Toowoomba Sports Ground Trust* was under way.

The Queensland judge on the bench, Justice Dowsett (cited in Hagan 2005 p. 242) made his intentions known from the outset when he unexpectedly said to the assembled journalists with notebooks and pens in hand: 'I won't have this court room turned into a circus'. This stoutly judge gave the impression to me that he was running late for a game of golf with his buddies and the case was more of a nuisance value than something he should take seriously. Justice Dowsett swivelled uncomfortably on his large black leather chair as he pondered the appeal documents before him. I turned and caught the eye of David Curtis and Dr Libby Connors, sitting

a few rows behind me, and they were shaking their heads in dismay at the obstinate reaction of Justice Dowsett and the legal debate had not even commenced.

It was obvious that we were going to be in for a long day. Mary Louise Willheim sat directly behind her husband and our legal team and I gathered from her expression that she also felt we were off to a bad start. I am sure she would have sat through literally hundreds of cases involving her eminently credentialed husband over the years and had seen some appalling attitude displayed by pompous judges in the past. I never did get to ask her how Justice Dowsett's performance ranked on her sliding scale of good to reprehensible.

After, what appeared to be an eternity, the three judges rose and departed the courtroom and I walked out with my legal team absolutely flabbergasted. The case reminded me of an unfair fight between an undefeated professional boxer and a drunk down at the local pub. The drunk gets knocked down and gets up again and within seconds he is back on the seat of his pants with blood streaming out of new wounds.

The judges from the southern states afforded Ernst ample time to present his case and thoroughly cross-examined him on the finer points of law. However, the issue that they got bogged down on was whether the act was done *because* of the race, colour or national or ethnic origin. Whites in Toowoomba, and indeed nationally, did not see Edward Stanley Brown as having a racial identity just as they did not have regard to that notion for themselves or their parents. That oblivious notion is the essence of inherent subliminal Whiteness that is conferred on those born white in Australia. Moreton-Robinson (2000 p. 61) summed this position up aptly when she wrote: 'In theory white race privilege will remain uninterrogated as a site of domination, because whiteness is not positioned as racial location and identity'.

I felt my legal team had not addressed this technicality to the judges' satisfaction and they seemed to expand on that line of questioning as a statement, 'you've got no chance of winning this one'. I felt they did not give my senior counsel much flexibility and I could tell by Ernst's frustrated tone that he was not making ground on winning over the judges. I did not look forward to walking out to the assembled media as they also sat through the legal debacle inside the Brisbane Commonwealth

Law Courts. I figured they deserved to get my response first hand rather than make creative interpretation of my views, for their mass audience. To say it was not one of my better days would be an understatement.

On the 23rd February 2001 the court ordered the appeal be dismissed and the appellant pay the respondent's costs of the appeal, to be taxed in default of agreement (Hagan 2005 p. 243). The judgment concluded:

> This submission should not be accepted. The issue is not whether the application "Nigger" was originally applied because of considerations of colour, but whether the acts of the Trustees were done because of such considerations.

For a second time members of the judiciary had failed to understand publicly expressed racism. Judges were being proved to identify with the hegemony of whiteness. Charbeneau (2009 p. 1) best explains the hegemony of whiteness positioning of judges on hearing my racially contentious case when she wrote: 'Like race itself, Whiteness is a social construction and a lived reality, a subjective experience and a set of objective power structures and relationships that protects a racial hierarchy that privileges whites and promotes the hegemony of whiteness'. Only time would tell whether I would experience the same gut-wrenching sensation again after the final legal recourse in domestic courts was complete.

3.1.4 E.S. 'Nigger' Brown Stand – High Court Special Leave to Appeal

I was most distressed after the first court appearance but after reading the decision of the Full Bench of the Federal Court I was rendered speechless and felt nauseous at the clever play on words by these eminent judges in their defence of the public display of the most racist word in the English language: Nigger. Peter, Ernst and I agreed we should make application to the High Court of Australia for Special Leave to Appeal. Ernst told me that we needed to seek leave to appeal to the High Court, as it was not an automatic right for anyone to have his or her case heard before the Full Bench of the High Court: five of the seven judges constitute a full bench. That night I clicked on the Internet to read up on the background of the current group of High Court judges to see if any of them had a background on social justice or human rights. I do

not know what good the information would do but I needed to know that there was a small chance of success for my hard working legal team and myself: Peter and Ernst were working pro bono – no-win-on-fee basis – and on results to date they were not receiving a financial return for effort.

When the big day arrived my legal team and I were once again mobbed by the media as they lined up outside the Commonwealth Law Courts to see first-hand, as they all predicted, the Highest Court in the land throw my case out for the final time. There was an air of expectancy at the case going before the High Court. After fighting our way through the largest contingent of media representatives assembled thus far, my legal team made for the door of the courtroom. As we opened the doors to the room we were shocked to see the room full of reporters. We knew there was to be another court case before us and knew that an appeal on an immigration issue would not pack the spectators gallery and therefore, I deduced, the media representatives had arrived early to witness *Hagan v Toowoomba Sports Ground Trust* big day.

After standing against the wall for fifteen minutes I decided to go outside for fresh air and return when our case was called. Five minutes later I saw members of the immigration case walk out of the courtroom and saw the victors doing a lot of backslapping. I waited for a while for someone to call me inside and after another couple of minutes had passed I decided to make my way to the courtroom to take my seat. To my shock the case had commenced and Ernst was on his feet presenting our appeal.

On entering the packed room I embarrassingly took my seat immediately behind my Senior Counsel. It was not long after I sat down and looked around the room to acknowledge friends when Justice Mary Gaudron (cited in Willheim 2003 p. 100) commenced her incongruous address to Ernst about pink cement trucks.

> Gaudron J:
> But your argument comes to this, does it not? Any person of any colour – let us assume pink persons who are offended because of any material, including, for example a pink truck, cement-mixer, they think you should not use the pink –

and it is called “Pinky’s Cement-Mixer” – would automatically make out a complaint.

Mr Willheim:
It would still need to satisfy section 18C(1)(a) and that is an act that is reasonably likely to offend a group of people.

Gaudron J:
Let us assume for the moment that I am pink, which is not a bad assumption, and I am offended and it is reasonably likely that I will be offended by a sign which says “Pinky’s Porkies”. Now, is that made out?

Mr Willheim:
The first question, your Honour, is whether “reasonably likely” imports an objective standard. It is a community standard. That would be a fairly difficult hurdle in the case of pink---

As I looked around the courtroom I saw journalist frantically taking down those lamentable words of an eminent justice of the highest court in the land.

I have witnessed many instances of bullying in the schoolyard and even in the classroom at primary, secondary and tertiary institutions but I have never seen a judge speak down to a distinguished constitutional barrister in such a demeaning fashion. Justice Mary Gaudron appeared to be enjoying her moment of glory in front of a packed gallery and attacked Ernst’s application to his task at hand with the appeal for no apparent reason except for the fact that she could.

So sure was Justice Gaudron of the outcome that she told the defence Queens Counsel, Patrick Keane – who subsequently was appointed to the High Court in March 2013 – to resume his seat, as she did not feel it was necessary to hear from his side. Justice Gaudron appeared to be consulting her colleague; an act I thought would have been conducted outside the courtroom away from the glare of the public gallery, and soon after announced the decision.

> Gaudron J: Yes, thank you, Mr Willheim. We need not trouble you Mr Keane. We see no error in the approach of the Full Federal Court to the interpretation and implication of sections 9, 18B and 18C(1)(b) of the Racial Discrimination Act (Cth). That being so, the question whether further evidence should have been admitted by the Federal court, which is raised in the applicant's written submissions, is academic. So far as concerns the costs of the Federal court proceedings, that was a matter within the discretion of the Full Federal Court and is not a matter which of itself would justify the grant of special leave to appeal.
>
> Accordingly, special leave should be refused. We see no sufficient reason to depart from the usual practice with respect to costs in this court. The order will be special leave is refused with costs (cited in Hagan 2005 pp. 245-246).

The court proceedings started at 1.57 pm and finished at 2.20 pm. I barely had time to take my seat when Justice Gaudron and Justice Hayne stood to leave the chamber.

It took the High Court of Australia's best legal brains just 23 minutes to make their ruling that the most abhorrent word in the English language, Nigger, was not offensive. I could understand Justice Hayne arriving at that decision on the word 'Nigger' as an eminent judicial figure who was once described as 'the sort of person Tim Fisher (former federal National Party leader) would like to have there (High Court) … He won't be a supporter of Mabo or Wik and all those things' (Middleton et al cited in Burton 2010 p. 327). Justice Gaudron – a noted social justice advocate – who was part of the majority in the High Court decisions of Mabo and Wik, took me by surprise, as I am sure it did of many others sitting in the courtroom on that day. However, this unexpected outpouring by Gaudron of implausible legal argument on the N-word reinforces my hypothesis of judicial figures being unduly influenced by their nurturing process inculcated with xenophobia when making race-based judicial determination.

Once again I walked out to the waiting throng of media and told them how disappointed I was and that I would now take the case to the United Nations (UN). I also told them I was confident I would find at least one judge at the UN who was

black and who would understand how offensive the N-word was in the era the sign in question was erected and still is today. *The Toowoomba Chronicle* (Keating 2002) summed up the views of most media covering the case in their editorial on 21 March under the headline, 'It's fair enough to take a stand, but time to end 'Nigger' drama.' Whilst there were some sympathetic media personalities who wished me well in my audacious bid to remove the N-word from a public sign in my hometown, most reporters, however, were baying for my total failure in order to write their inventive headline announcing to the world the conclusion of this long running saga.

From my perspective, as long as there were legal options, this controversial case would remain in play and continue to frustrate and plague those who had to date invested so much or their time and resources in its contemporary maintenance. What also became apparent to me were the judges, who rule on my case, had no intention of going down in history as the ones who adversely impacted the hegemony of Whiteness of those football administrators in Toowoomba back in 1960 when they chose to honour their famous rugby league champion by placing his contentious nickname 'nigger' on a public sign they erected. A smear on the privileging of Whiteness of the good folk of Toowoomba of the 1960's era, and those still fighting hard today to maintain that status quo, was evidently not going to happen under their watch.

3.1.5 E.S. 'Nigger' Brown Stand – United Nations CERD Appeal

My last hope now rest with an appeal to the UN. I yearned I would not lose to them, as my public campaign and the stress I put my family through would have been in vain. All I could do now was busy myself while I waited for the decision of the UN. As promised my legal team sent an appeal to the United Nations Committee on the Elimination of all Forms of Racial Discrimination (UNCERD), in Geneva, on 31 July 2002. Once again the ugly side of Australian legal bureaucracy raised its bigoted head and tried to have our appeal to the UNCERD thrown out on the grounds that it was not admissible. I actually saw the actions of the Attorney General's Department a sign of weakness on their part as they probably always thought the word Nigger would be upheld at one level of the Australian judicial process and now that they managed to

survive the legal processes domestically they feared a contrary legal position offered on my case from abroad.

It was an awkward time for me not quite knowing the process of the UN except that it was the last level of appeal I had available. I asked Ernst if we were required to travel to Geneva to address the international panel of judges who would hear our case. I had difficulty organising enough money for a return bus fare from Toowoomba to Brisbane and had no idea how I would manage international airfares and accommodation. I was relieved when Ernst informed me there was no need for overseas travel as all submissions were in writing and there was no provision at the UN for personal representation.

On the 20th March 2003 I finally received the decision I was patiently waiting for in *Hagan vs. Australia*. In 7.2 of their judgment UNCERD made the following recommendation:

> The Committee therefore notes with satisfaction the resolution adopted at the Toowoomba public meeting of 29 July 1999 to the effect that, in the interest of reconciliation, racially derogatory or offensive terms will not be used or displayed in the future. At the same time, the Committee considers that the memory of a distinguished sportsperson may be honoured in ways other than by maintaining and displaying a public sign considered to be racially offensive. The Committee recommends that the State party take the necessary measures to secure the removal of the offending term from the sign in question, and to inform the Committee of such action it takes in this respect.

On the day I received the call from Peter Black to say the UN decision had come through his first question was, 'are you sitting down?' I thought for a couple of seconds and tried to imagine what else could possibly go wrong. I told him to be frank because nothing could possibly upset me after the last three years of failed legal attempts at justice.

'We won our appeal at the United Nations,' was Peter's rapturous response. I asked him to repeat himself. 'We won our appeal at the United Nations – we've had our win

at the last court,' reiterated Peter. Tears came streaming down my face as I tried to be as calm at the other end of the mobile phone conversation. I was not doing a good job of it as all those hurtful memories of the Toowoomba mayor, Chairman of the TGST and the Bowen Street Indigenous clique boasting after successive victories at the Federal and High Courts of Australia, came flooding back.

When I did manage to compose myself I said a sincere 'thankyou' to Peter. I told him I was glad he persevered with me and again thanked him for his tireless work and devotion to a cause that many others would have given up on much earlier. To imagine a man with a private business devoting as much time to my case, free of charge along with my barrister Ernst Willheim, is to picture utopia: a place with a perfect social and political system where everyone is viewed as an equal and his or her ideas respected.

For the first time in my campaign I started to receive favourable articles including editorials, news stories and cartoons (cited in Hagan 2005 pp. 251-252) such as 'New Sign Of Respect – Black and white meet on 'Nigger' ruling' (*Toowoomba Chronicle*); 'A good man, and a very bad word' (*The Weekend Australian*); '"Nigger" should go, say most' (*Toowoomba Chronicle*); 'Colourful term past its prime' (*The Courier Mail*); 'Only a niggard would take offence at a nickname' (*The Courier Mail*); as well as a prominent cartoon under Opinion & Letters by cartoonist Sean Leahy depicting an Aboriginal fronting angry white people under the public sign ER "White Honky" Jones Stand under the caption … '*it wasn't offensive at the time*'. And two people in the background asking '*who's that sitting on the fence?' – '...oh that's Peter Beattie.'*

But unfortunately not all media commentary was supportive of my win at the UN. Alan Jones (cited in Hagan 2005), one of the most prominent and controversial political commentators in Australia watched by several hundred thousand viewers every morning on Channel Nine *Today Show* made a vicious attack on the United Nation and myself:

> Well, can you believe this? …

> Well, some dunce who calls himself an Aboriginal activist has been petitioning the United Nations Committee on the Elimination of Racial Discrimination, thank you very much, to have the word "nigger" removed.
> And, are you sitting down?
> An 11-page judgment by this same outfit, most probably made up of freedom loving people from Cuba, the Middle East and the darkest and despotic parts of Africa, has said the term was offensive and insulting.
> A bit like their 11-page report. …
> There is no reason whatsoever why the grandstand should be renamed.
> It's the activist who needs to change his ways, not those who named the stand nearly 50 years ago (pp. 253-255).

After the initial positive coverage from the media I started to notice television stations conducting their news polls. Most polls gave a similar response of 85% against the name change to 15% in support. I took the news polls for what they really were: a rear-guard fight to reaffirm the hegemony of Whiteness after receiving a near-fatal blow to their universal predictions of my comprehensive legal trouncing in my attempt to remove a relic of a racist past public sign they fought so confidently to maintain.

There were a lot of positives that came from the victory, despite comments from the likes of Alan Jones and a bigoted New Zealand radio commentator, Paul Holmes, who called Kofi Annan, U.N. Secretary General, a 'cheeky darkie' (Martin 2003). It just goes to show how ignorant – or sensational, depending on the intent – of Holmes as Kofi Annan played no part in the judicial decision entered into by UNCERD on the Nigger Brown Stand case.

Inadvertently results of the polls worked to my benefit, as they were recordings of the fact that people were discussing my win at the UN. I would have been worried had I won after fighting for so many years and no one cared. It became very evident that the UN's decision had ruffled feathers of the establishment specifically and the general populace broadly. The John Howard led administration demonstrated their recalcitrant stance to the UNCERD decision by simply questioning its authority to tell them what they can or cannot do on domestic matters.

Willheim (2003 p. 128) argued the Australian government's failure to abide by the UNCERD recommendation to remove the offending word from the sign in question 'calls into question Australia's continuing commitment to and respect of human rights'. He stated:

> Where a State Party has made a formal declaration that it 'recognizes the competence of the Committee' and that State Party has submitted to the Committee 47 pages of detailed legal argument, subsequent rejection of the Committee's decision on the ground that the Committee is not a court is bordering on the bizarre.

Within a week of the United Nation's decision I received word that Bob Weatherall, prominent Aboriginal activist, had come forward to say that he attended the Indigenous community meeting that supported the retention of the N-word on the public sign in Toowoomba that swayed Justice Drummond in dismissing my initial application to the Federal Court. Bob confirmed he had voted against the resolution. A few days later Bob rang me at home to tell me that he had a ten-minute argument with mayor Di Thorley over the retention of the name. He also said that a number of people were so offended by the resolution they abstained from voting. Bob said he was very disappointed the minutes of the meeting, allegedly typed by the Chair's daughter, did not reflect accurately the record of proceedings, such as the heated debate and votes against as well as abstentions of the meeting.

In the Statutory Declaration provided to Drakopolous Black Solicitors, Bob stated:

1. I am an Indigenous person who attended at a community meeting in Toowoomba on 19 July 1999 for the purpose of discussing the ES "Nigger" Brown stand controversy.
2. It was my view that the meeting was not representative of the Toowoomba Aboriginal community.
3. It could not have been as there were not more than 30 people there in total, which included several persons who were not members of the Aboriginal community.

4. One of these persons was Di Thorley who was a member of the Sports Ground Trust and the Toowoomba Mayor.
5. I recall having a heated discussion with Di Thorley over the use of the word "Nigger" in the stand name during the course of debate about the subject.
6. There has been a suggestion that a motion passed at the meeting requesting that the name "ES Nigger Brown" remains on the stand was passed unanimously. I have had cause to view the minutes of the meeting, which says this. This is not the case.
7. I definitely voted against the motion. I also recall that two and three other persons abstained from voting upon the motion altogether.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the "Oaths Act 1867-1986" as amended.

I was excited about the news and delighted that Bob had chosen to come forward with his statutory declaration. I was also a little disappointed that the information was not made available to my legal team at the time of the first court case. I believe it would have impacted on the judge's decision but probably would not have changed his judgment such is the prominence of thought of judicial representatives today in demonstrating the consensus of a white populace immersed in the ways of a bygone era.

Chapter 4: One law for blacks and another for whites

Chapter 4.1 White law of the land

In a nation that incarcerates its First Nations People at a shamefully higher rate per head of population compared to its non-Indigenous population (Weatherburn 2014), including the astonishing jailing of 'black men five times more than apartheid South Africa' (Graham 2009) in a bygone era, it is refreshing to hear of judges who advocate to reverse that vicious cycle. If only the exception of caring judges making a difference in reducing Indigenous incarceration rates and recidivism was the rule for judges in Australia there would be no need for a dissertation like this one to be written.

The poignant comment of Judge Michael Forde (cited in Koch 2005) about Indigenous community leaders working to address issues of law and order which will not work 'unless there is government will and financial support to ensure they succeed' is apt. The District Court judge made those informed observations after spending years working in courts servicing remote communities in the Gulf of Carpentaria and where he spent years on a 'personal campaign to demolish a "cultural" belief among young Aborigines in remote communities that going to jail is a rite of passage on the path to manhood'.

Martin (2015), reporting for ABC News, quoted Western Australia's Chief Justice Wayne Martin, in his response to an Amnesty International report that claimed WA Aboriginal children are 53 times more likely to be jailed than their peers, saying the justice system must accept some of the blame for what he described as 'appalling' Aboriginal incarceration rates. 'The justice system applies rules that work very well for conventional or mainstream Australians,' he said. 'They don't work terribly well for people who are marginalised or disadvantaged.'

Herein lies the problem of a judicial system that, in the main, is too rigid in its dealings with Indigenous Australians and steadfast in its resolve at enforcing breaches of societal codes of conduct. Aboriginal and Torres Strait Islander Social Justice

Commissioner Mick Gooda, in his forward to *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia* report (Amnesty-International 2015 p. 3) identified how the 'ongoing legacy of colonisation' and 'everyday experience of racism of our peoples cannot be overlooked as contributing factors' to the high rate of Indigenous overrepresentation in the criminal justice system.

This chapter looks at the subliminal levels of whiteness to explain the reasons why members of the judiciary, specifically High Court Justice Mary Gaudron who presided over my application seeking Special Leave to Appeal to the High Court, have developed a propensity to act towards Indigenous offenders less favourably than they do to their white counterparts in Australian courts (Weatherburn 2014).

At around the same time as Mary Genevieve Gaudron was born on 5 January 1943, Kullilli women, children and old folk were forcefully evicted from their country in far southwest Queensland. Mary Gaudron's parents, Edward and Grace, never envisaged, from their humble beginnings living in rural New South Wales on Edward's railway worker salary, that their baby daughter would one day grow up to become a lawyer and rise to the esteemed position of a Justice of the High Court of Australia, and in so doing becoming the first female to achieve that milestone.

Conversely, at about the same time of Mary Gaudron's birth, Kullilli Elder Peter Hood – with not the glimmer of hope of his family etching out a decent living back then or of gaining legal respite in times of need – shared the sad news of his step-father being killed by white men at a post-race meeting dance. Hood (cited in Wharton 1994) said murries came running back to his camp to explain that 'our old fella been killed and his body stuffed into the boot of a car':

> That was the greatest injustice I ever experienced, a very bad thing they done. When they held the hearing about the death, no Aborigines were allowed into the courthouse – but they all seen what happened, they seen my stepfather killed. And all them fellas said the man who did it should have been gaoled, but you see he was friendly with the police (p. 100).

Wharton's postscript prophetic words to Hood's stepfather's senseless killing (1994 p. 100): 'In those days, squatters not only controlled local government but had influence over the courts and police affairs as well. The JPs and magistrates were their friends and relations', give credence to my hypothesis: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia*. The only difference it would appear from Hood's horrendous experience back in the 1940s, of gaining no satisfaction or closure from the judiciary for the callous murder of his stepfather, is that Indigenous family members and friends of the victim or the accused are now allowed into the courtroom to hear deliberations of the judiciary.

Elder (2003 p. 231) paints an ugly picture of frontier Australia as a lawless place to be where commanding officers were instant judge and jury over the crimes allegedly committed by Aborigines:

> In Maitland an Aboriginal man was captured and accused of a murder, which had occurred 65 kilometres away. Seeing the complications of bringing the man to trial the commanding officer decided on immediate execution. The suspect was tied between two saplings. Various soldiers used him as human target practice. The first soldier hit the Aboriginal man in the back of the neck. The second soldier's shot blew the man's jaw away. The third soldier put his gun against the man's face and blew his head away. No-one ever determined whether the man was innocent or guilty.

Although a century lapse in time separated the two tragic incidents, involving Peter Hood's stepfather and the accused Aboriginal man in Maitland, the outcome of their brutal deaths at the hands of white men were indisputably parallel in intent and consequence and premised on the hegemony of Whiteness (Allen 2000); a presumption of white superiority and contempt of the Aboriginal race. The law and white community broadly viewed the imagined crimes of the deceased as a validation for the lethal use of power by their killers as an the act of repression and control of Indigenous people back then (Anthony 2013).

Kercher (cited in Harman 2012) points out that the obvious tool of white men in ensuring the right outcome in judicial bias cases is to exclude Aboriginal witnesses from testifying:

> Excluding Aboriginal people from providing evidence "encourage[d] the continued reprisals between Aborigines and the colonists … When whites stuck together, their superior weaponry was matched by the legal tool of this rule of evidence and reinforced by the general cultural gap between blacks and whites" (p. 5).

Justice Mary Gaudron and many of her senior judicial colleagues chose to study law at university and pursue a career in a legal system whose Whiteness (Moreton-Robinson 2000) had been unassailed for more than two centuries in this country. To this end Charbeneau (2009 p. 6) contends white students at universities 'act on White privilege because they were born into and benefit from a society where racial identity is constructed in such a way that physical characteristics carry implications of social standing; Whiteness grants a position of advantage and being of color grants a position of disadvantage.' Gaudron and her judicial peer's legal instructions came originally from their university lecturers and later developed through practice under a boss in a law firm, from which their superiors' own legal tutelage was garnered from their learned elders immersed in the alluring and addictive mature smell of Whiteness from a bygone era. Intergenerational bigotry came about as natural as learning to ride a bike; one never forgets how to ride a bike nor how to exhibit racist thoughts of 'Others'.

4.2 Justice Mary Gaudron's story

Mary Gaudron, 'the red-haired daughter of a heavy-drinking Catholic railway worker and trade unionist,' (Ross 2011) grew up in Moree in north-western New South Wales during the 1940s and 1950s where her father Ted settled his family near the 'Top Camp', one of the town's larger Aboriginal camps. Burton (2010 p. 14) argued the 'proximity of Top Camp to the railway community, and the poverty of both communities, meant the Aboriginal relations with non-Aborigines in East Moree were more congenial than with the white townspeople across the river'.

The term congenial may not exactly be the word used by the 'Top Camp' Aborigines as they were still subject to apartheid style social policies right up to the mid-1960s when Charles Perkins led the Freedom Ride of twenty-nine students from the University of Sydney on 13 February 1965 (Read 1990) to Moree and other racist north–western NSW towns. Perkins, and a busload of his peers including Jim Spigelman, later NSW's Chief Justice, 'succeeded in dismantling the virtual apartheid that banned indigenous people from swimming pools and parts of the cinema and shops in the north-western NSW town' (Joel 2008 p. 29). To the chant of 'Get the coons out' and 'The only good one's a dead one' from a 500-strong crowd assembled outside the entrance to the Moree pool the future NSW Chief Justice, Jim Spigelman, who was smacked to the ground "was suddenly aware how normal individuals could 'go crazy'" (Read 1990 pp. 110-111) when they were confronted with their own racist outlook on local Aborigines. Local Aboriginal Elder Noeline Briggs-Smith (cited in Burton 2010 p. 21) reported: 'Sadly, those who live in the Aboriginal community today still suffer as a result of the past, and whatever their motives, those in local government authority at that time created a part of history that is ill-remembered about Moree.' Today prominent Moree Aboriginal leader Lyall Munroe Snr. acknowledged, during the 50th Anniversary of the Freedom Ride through Moree on 20 February 2015, that 'there is still much more to be done' on the ground with race relations in his hometown (ABC 2015).

A young Mary Gaudron grew up in Moree in a home where her father's violent moods disrupted the household when, after a few beers, domestic outbursts were expected: 'He created tension because no one ever knew when he would "go off"' (Burton 2010 p. 23). The safe haven that Mary's mother Bonnie provided for her young family during her husband's violent drunken episodes was a home that firmed up and enhanced young Mary's relationship with a young Aboriginal girl by the name of Betty Cutmore.

> Mary was bundled off to sleep at Daisy ('Nan') Cutmore's, several doors along the street. Daisy Cutmore was a respected Aboriginal woman who worked as a cook in many of Moree's hotels. She purchased her own house in Morton Street in 1949 – the first Aboriginal family to own a house in the railway

> community. Her daughter, Dorothy, and grand-daughter, Betty, lived with her. Betty and Mary became good friends (Burton 2010 p. 23).

The relationship Mary Gaudron developed with an Aboriginal girl who made a lasting impression on her is systematic of the blasé 'I'm not racist … my best friend is black' approach many Australians adopt when questioned over relatable issues of xenophobia throughout their adult lives (Heiss 2007).

Inadvertently Mary Gaudron, whose life's story as told by Burton (2010) *From Moree to Mabo: the Mary Gaudron story*, has supported my claim that Australians generally, including judicial figures, are inherently racist through their nurturing process. She grew up in a town that took exclusion of Aboriginal people for granted. It is as if her gender disadvantage blinded her to her own race privilege. She said as much in a paper delivered during the conferral of an Honorary Doctorate of Laws at University of Sydney in 1999, when she observed that, 'while forty years ago an Australian woman had fewer rights than a man, "her legal status was infinitely superior to that of Aboriginal Australians" and that they were "very considerably less than equal. They were not even counted in the census"' (cited in Burton 2012 p. 10).

A young Betty Cutmore would often accompany Gaudron to the local pool to gain much needed respite during the sweltering summer heat in Moree and did so without experiencing the indignity of hearing the 'no blacks allowed' call from a bigoted pool attendant. She achieved this remarkable feat because she was 'lighter in skin colour than many of her Aboriginal friends, and entering the pool with Mary, she did not appear noticeably "black"' (Burton 2010 p. 24). The issue of fair, light or white skin Aborigines enjoying more rights than Aborigines who were darker is still a contentious debate today as it was back in the days when Cutmore and Gaudron enjoyed time together swimming in the Moree pool without challenge to Cutmore's race.

High profile social commentator, Andrew Bolt (Connor 2011), writing for the Melbourne *Herald Sun*, found himself before a judge to defend his controversial comments about fair Aborigines who '"chose" their identity in order to access "serious perks and Aboriginal-only benefits"', (Savage 2011 p. 24). Or as Keith

Windschuttle (2010 p. 20) so judiciously contends of the fair skin Aborigines in the Bolt case, the 'choice to be Aboriginal can seem almost arbitrary and intensely political'.

The 'white Aborigines' case of *Pat Eatock v Andrew Bolt* is a poignant reminder that the more things change the more they stay the same. 'The number of Indigenous people in Australia jumped an amazing 33 per cent from the 1991 to 1996 census, with increase of 16 per cent and 10 per cent between the later censuses of 2001 and 2006' (Broome and Broome 2010 p. 321) were, in part attributed to fair, light or white skin Aborigines openly identifying with their Aboriginality. There would have been many fair skin Aborigines, like Betty Cutmore, who used their lighter skin colour to their benefit, without necessarily denying their descent in any nefarious way (McGregor 2002). Andrew Bolt extended his biased views on this topic to promote his Opinion piece and – to his detriment – was found to have been in breach of Section 18c of the Racial Discrimination Act by Justice Mordecai Bromberg (Connor 2011).

There is no doubting Mary Gaudron's commitment and passion for fighting for social justice came about in many ways from her working class upbringing as the daughter of a railway worker in a rural township and of her close friendship with Aboriginal local Betty Cutmore. One of her big cases after finishing law school in 1965, which she won, was the Pat Mackie defamation case against the Australian Consolidated Press who he claimed defamed him when he led the 1964 Mount Isa miners' strike (Burton 2010).

Burton (2010) affirms the Mackie case was remarkable because it brought together Gaudron and Mackie who were similarly fearless and feisty when it comes to issues concerning human rights and discrimination:

> He did not like the town (Bundaberg) because on his first day there he 'brushed with some rotten members of the Queensland police force' when he tried to intervene over their unfair treatment and arrest of an Aboriginal man. He tried to complain about the brutality of the two police and offered to bail the man

> out if he were charged, but was told to 'get right out of town as quick as you can' or he would be locked up (p. 102).

Gaudron's staunch advocacy for social justice, in particular for gender equity, was the principal reason for her rise through the ranks of the legal profession to the Bar and then on to the bench of judges:

> Representing the Commonwealth in the 1972 Equal Pay Case was, for Gaudron, not only a career highlight but also a turning point. It led to her appearances in subsequent national wage cases and to elevation from the Bar to the bench of judges she appeared before, to further improve working conditions for Australian men and women (Burton 2010 p. 113).

David Marr (2011 p. 11) rightfully pointed out that Mary Gaudron broke many records throughout her distinguished legal career: 'one of the first women to take silk, the youngest of either sex to sit on the Conciliation and Arbitration Commission and the first woman appointed to the High Court'. But were those extraordinary personal achievements the result of an overly ambitious person in pursuit of personal attainment?

Gaudron was a part of the majority decision on *Mabo and Others v Queensland (No. 2)* [1992] HCA 23; (1992) 175 CLR 1, an historic High Court judgment that the 'lands of this continent were not terra nullius or "practically unoccupied in 1788"' (Bartlett and Australia. High Court. 1993 p. 83). Renowned historian Professor Henry Reynolds described the Mabo judgment as the 'correction of Australia's documented history' and singled out Justices Deane and Gaudron for special praise:

> Their main business was jurisprudence. But the passion, which drove the judgment, came from a deep sense of the need to remedy historical injustice with Justice Deane and Gaudron referring to a legacy of unutterable shame (Reynolds cited in Burton 2010 p. 289).

Justice Gaudron, as in Mabo, once again raised the ire of all tiers of government when she was in the majority in the High Court's decision in Wik Peoples and Thayorre

People v Queensland (1996) 141 ALR 129 ("Wik") which ruled that 'the granting of a pastoral lease, whether or not the lease has now expired (or has otherwise been terminated), did not necessarily extinguish all native title rights and interest that might otherwise exist' (Hiley 1997 p. 1).

However, and in keeping with my hypothesis of judicial figures being unduly influenced by community xenophobia, Justice Gaudron went against Aboriginal women in the case of the Ngarrindjeri tribe who expressed a strong secret women's business belief that building the Hindmarsh Island Bridge in South Australia would render them barren (Weiner 2002, van Krieken 2011).

Burton (2010 p. 332) argued the Hindmarsh Island Bridge case 'is significant in the context of the development of Gaudron's thinking, as she reviewed her previous analysis of the race power that (Justice) Callinan had referred to'. Kowski, as well as Saunders (cited in Burton 2010 p. 332) contend Gaudron, 'Not indecisive by nature, her change of mind demonstrated strength – a determination to get the law right – even if that required reviewing her own thinking'. Paradoxically, Gaudron's change of mind in this race-based case was inconsistent with her normal unwavering stance on gender equity and social justice matters and speaks volumes of her vacillating under the weight of community expectations and xenophobia.

Her backflip on questioning the integrity of Ngarrindjeri women's spokesperson Doreen Kartinyeri (Penelope 2000), a well-known local Aboriginal historian and activist, who claimed that building the bridge would fatally impair the reproductive capacity of women's bodies and the reproductivity of their cosmos more generally brings into question her empathy for Aboriginal women personally and their cultural aspirations broadly.

It is worth pointing out that Gaudron's closest ally on most High Court decisions, Justice Kirby, was the lone dissenting voice on the bench in *Kartinyeri v Commonwealth*, known as the Hindmarsh Island Bridge case. Burton (2010 p. 334) reported that Kirby 'placed importance on the reasons for the 1967 amendment in holding that the race power did not extend to the enactment of laws detrimental to, or

discriminatory against, people of the Aboriginal race, or of any race. Gaudron did not support this view'.

Gaudron displayed her racial bias in a similar manner to judges in the *Members of the Yorta Yorta Aboriginal Community v State of Victoria and Others (2002)* case where Marchetti and Ransley (2005 p. 535) argue the High Court accepted the view of Indigenous culture having been 'swept away by the tide of history' and Aboriginal applicants having lost their Indigeneity and in *Kruger v The Commonwealth of Australia (1997)* and *Cubillo and Gunner v The Commonwealth of Australia (2000)* where judicial figures depicted Indigenous people as an unworthy 'Other' as witnesses in dismissing their cases.

Another case in point that highlights Gaudron's racial bias, although she claims ignorance, involves an earlier time as a lawyer when she represented a young Aboriginal mother who was gaoled for a minor offence. In this case the young mother's daughter was made a ward of the State and placed with a white couple. 'On release from prison, the mother sought to regain custody. But she failed to appear at the hearing. When she was located, Gaudron asked why she had not come to court. "I didn't want to go to gaol"' (Burton 2010 p. 300) she replied, to which Gaudron's response was that gaoling her 'never occurred to me, I didn't know'. Gaudron made reference to the case in an article based on her 'Speech to launch Australian Women Lawyers' in Melbourne (cited in Burton 2010 p. 300) where she:

> [t]old eloquently of [the mother's] only experience of the law, namely, of going to court through one door and coming out several months later via prison. And it need hardly be said that she did not get her daughter back, partly because her failure to appear at the earlier hearing was taken to indicate a want of genuine concern for the welfare of the child.

It is hard to believe that Gaudron, who had been practicing law since the mid-1960s, later admitted as a barrister in 1968, would confess to being unfamiliar with the unique historical circumstances Aboriginal people countenance when appearing before a court of law given her past association with Aboriginal people in Moree broadly and her close childhood friend Betty Cutmore specifically. It was clear that

Gaudron ‘was always aware of the privileges she and her family enjoyed as white Australians when compared to the nearby neglected and significantly poorer Indigenous community’ (Burton 2012 p. 10). Gaudron’s ‘never occurred to me, I didn’t know’ (Burton 2010 p. 300) comment about the plight of an Indigenous client’s personal predicament, as Charbeneau (2009 p. 56) says is Whiteness reproduced ‘when white people claim ignorance or are unaware of difference’.

Moreton-Robinson (2000 p. 164) asserts, ‘Ideologically and in practice, white feminists’ complicity in reproducing cultural oppression, which renders inferior such “differences”, is part of the white patriarchal cultural hierarchy’; a world from which Mary Gaudron came from in western New South Wales as a child and from which she embraced with vigour later in life as a lawyer, then barrister and ultimately as a Justice of the High Court of Australia. Mary Gaudron always had the ‘best intentions’ of doing well by Aboriginal people: taking Betty Cutmore to the Moree public pool in the 1950s when blacks were not allowed; and of voting in support of Mabo and Wik judgements when the government and the mining lobby would have preferred she did not, are however, best intentions that ‘work to mask and perpetuate whiteness,’ Salter (2013 p. 195) contends, ‘irrespective of intent’.

4.2.1 Justice Mary Gaudron’s inauspicious N-word determination

Burton (2010 p. 347) reported Gaudron was ‘particularly testy in *Hagan v Trustees of the Toowomba Sorts Ground Trust*, known as the ‘Nigger Brown’ case, in which she thought that a complaint of racism went too far,’ and appeared to be unusually ‘underprepared’ in challenging my Senior Counsel, Ernst Willheim:

> Gaudron J: Well, I will tell you how important it seems to have been to your case, Mr Willheim. Section 18B is not reproduced in the bundle of materials before the Court. …
>
> Willheim: It is the very first page of our bundle, your Honour.
>
> Gaudron J: Yes, thank you (p. 348).

As if things could not get any worse for the eminent Justice, who one would expect to turn up to a hearing fully briefed, Willheim corrected her again on the issue of whether a person might be likely in the circumstances to be offended having been addressed. Willheim (cited in Burton 2010 p. 348) pointed out that, 'since the trial judge had in fact found against Hagan on that point, the court below did not find it necessary to address the issue, which was one reason for the appeal'.

Willheim (2003 p. 100) questioned whether the following analogy by Gaudron of 'Pinky's Cement Mixer' was appropriate and 'What hurt would an Aboriginal person feel on hearing the analogy between the adjective "pinky" and the epithet "nigger"':

> GAUDRON J: But your argument comes to this, does it not? Any person of any colour – let us assume pink persons who are offended because of any material, including, for example, a pink truck, cement-mixer, they think you should not use the pink – and it is called "pinky's Cement-Mixer" – would automatically make out a complaint.
>
> MR WILLHEIM: It would still need to satisfy section 18C(1)(a) and that is that it is an act that is reasonably likely to offend a group of people.
>
> GAUDRON J: Let us assume for the moment that I am pink, which is not a bad assumption, and I am offended and it is reasonably likely that I will be offended by a sign which says "Pinky's Porkies". Now, is that made out?

Gaudron's analogy of pink as a race of people is quite breathtaking and goes to the heart of the unique Australian Whiteness debate. Moreton-Robinson (2000 p. 185) makes the salient point on the interpretation of race difference, alluded to by Gaudron, through the Whiteness lens when she said, 'To know an Indigenous constructed social world you must experience it from within; to know about such a world means you are posing a conceptual framework from outside'. To that end prominent feminist author Ruth Frankenberg (1993 p. 6) offers an apt description of Gaudron's judicial Whiteness lens in which she views issues around race as a 'set of locations that are historically, socially, politically, and culturally produced and, moreover, are intrinsically linked to unfolding relations of domination'. Gaudron enjoyed the

attention she commanded from a sea of journalists before her and looked like she enjoyed the feel of power – the power to dominate – afforded her whilst seated in her influential position.

I walked out of the hearing very disappointed when Justices Gaudron and Haynes denied me Special Leave to Appeal to the High Court of Australia and expressed my views as such to the throng of media waiting outside the court to interview me. 'Why are they (judges) talking about a pink truck when they are talking about the word Nigger,' Rosemary Desmond (2002) from AAP reported me saying under the title *Nigger no more offensive than pinky, says judge* during an interview outside the Commonwealth Law Courts, in Brisbane: 'I'm absolutely astounded that they don't see that "Nigger" is offensive.' Chris Griffith (2002) writing for *The Courier Mail* under the title *Court rejects sign appeal* reported, 'High Court judge Mary Gaudron yesterday used the analogy of a "pink person" being offended by a cement truck labelled the Pink Mix" to rule the E.S 'Nigger' Brown Stand "did not breach the Racial Discrimination Act"'. Writing his Editorial *It's fair enough to take a stand, but time to end 'Nigger' drama, The Toowoomba Chronicle's* Steve Keating (2002 p. 9) wrote my 'comments after High Court Justice Mary Gaudron's decision were emotive, not rational. To pursue the matter further with the United Nations will be a fruitless campaign'. It may well have been my local newspaper editor's expectation that my UN campaign would be fruitless, but the UN proved otherwise. UNCERD's findings in 2003 found in my favour and requested that Australia 'inform the Committee of such action it takes' (Hagan 2005 p. 249) to remove the offending term from the sign in question.

Burton (2010 p. 349) contends Justices Gaudron and Hayne may have had ulterior motives in denying my application in that they thought my case was funded by the Aboriginal Legal Service:

> Another explanation, though not relevant to their decision, is that she and Hayne possibly assumed that the case was funded by the Aboriginal Legal Service and, given their view that the case was without merit, they may have thought the funding inappropriate and wasteful. The case was, in fact, undertaken *pro bono*, by Willheim.

So once again we have a person of influence – in this case a white judge – using me to make a point about Aboriginal legal politics. Gaudron personally knew my senior counsel and should have called Ernst or contacted his office to ask if the ALS was paying him to represent me if that point troubled her. Personally, I do not believe it should have been factored into the case, as it should have been based on merit only. Gaudron, imbued with Whiteness, is suffering from denial; a form of denial that Tascón (2008 p. 256) aptly describes occurs 'when the body is confronted with a piece of evidence that cannot be readily-accommodated within the organisation of currently-held beliefs'. I suspect it mattered little to her that my case was or was not funded by the ALS, as all she saw in front of her in a courtroom was an Aboriginal man – applying his rights through the Australian legal appeal process – who in her view should not have found his way to her level for his case to gain a determination.

4.3 Judicial bias of race-based cases

There are other judicial figures, beside those who heard my case to remove the N-word from the E.S. 'Nigger' Brown Stand: that is, other than Justice Drummond on application to the Federal Court (2000); Justices Ryan, Dowsett and Hely on appeal to the full bench of the Federal Court (2001); and Justices Gaudron and Hayne on application seeking Special Leave to Appeal to the High Court (2002), who also do not have a problem with the word 'nigger' being used liberally in the Australian vernacular.

In 2010, Queensland judge Michael O'Driscoll dismissed a case against a Gold Coast pensioner, Denis Mulheron for using the terms 'nigger' and 'sand-nigger' in an offensive fax to a local politician. Broatch (2010 p. 9) reported O'Driscoll's ruling that: 'The words used were crude, unattractive and direct but were not offensive to a reasonable person.' So here is another judge who assumes a 'reasonable' person is a white person and that white people, because they have not been subjected to racial abuse, do not find it offensive. This is Whiteness, the privilege of growing up without a racial identity or being discriminated as a causal effect of it, exposed in its xenophobic embodiment.

Glen Norris (2015) highlights problems with Queensland judicial representatives being out of touch with average Queenslanders and the reason Attorney-General Yvette D'Ath is considering appointing an independent watchdog to handle complaints against the judiciary following a spate of controversial decisions:

> Right or wrongly it is a common complaint that judges and magistrates are out of touch with the rest of the community, that their sentencing does not reflect the average person's concerns about safety and wellbeing.
>
> The upper echelons of the law – the judges and partners of top law firms – are now remarkable for their lack of diversity. The Supreme Court bench in Queensland is overwhelmingly white Anglo-Saxon and mostly privately educated.

Clearly there are some serious issues at play in race-based cases if learned judicial officers are deemed to be out of touch with 'average (white) Queenslanders' by people in the know. If this is an informed opinion of judicial officers being out of touch collectively, as identified by Glen Norris (2015) in his prominent *Courier Mail* article, judicial figures certainly would not be acquainted or intimate with the average life of an average Indigenous Queenslander. How could they when a 'shift in sentencing dovetails a reimagining of the Indigenous offender and their community as lacking reason or legitimacy in the contest for space' (Anthony 2013 p. 166) and according to Cohen, 'The media also crystallizes this view in their creation of moral panics and construction of Indigenous people as deviant "folk devils"' (cited in Anthony 2013 pp. 166-167).

Could it also be the case that Aboriginal Australians are not deemed by judge O'Driscoll to be average or 'reasonable persons' when he made his judgment on the 'sand nigger' comment attributed to Gold Coast pensioner, Denis Mulheron by Broatch (2010 p. 9)? The observation of Norris (2015) on out of touch judges aptly applies to Judge O'Driscoll on the Gold Coast.

On reflection, the regard in which Justice Gaudron is held by avid followers of her vast body of work in championing gender equity and selective Indigenous causes is

probably the reason there has been very little public criticism of her on these contentious social issues. High profile Aboriginal lawyer Noel Pearson (cited in Koch 2005 p. 5) was one critic of Justice Gaudron when he attacked her for her 'poor articulation of the statute and common law on native title that is short-changing Aboriginal rights'.

In many ways the acclaimed social justice advocate who presided over my case in 2002 reminds me of judge Roger Therry (Connors 2008) who, as a young barrister, assisted in the prosecution of accused stockmen in the 2nd trial of the Myall Creek Massacre on 27 November 1838. Of the 11 men charged with killing '28 Aboriginal people, mostly women and children, at Henry Dangar's Myall Creek outstation on the Gwydir River, NSW' (Horton and Australian Institute of Aboriginal and Torres Strait Islander Studies. 1994 p. 746) seven were convicted and hanged. Broome (2010) reported a posse of twelve armed stockmen, eleven of them convicts or ex-convicts, who roped about 30 old men women and children together.

> They led them away before putting them to the sword and hacking off their heads and burning their bodies. Only naturalised blacks – those who agreed to act like Europeans and join the local economy as workers – were spared (p. 46).

A few days later when Dangar's manager, William Hobbs, returned to his Myall Creek run and saw 'the charred remains of twenty–eight bodies of men, women and children, he saw it as his duty to report the crime' (Clark, Cathcart et al. 1993 p. 202) and took the brave course of action of reporting the crime to police. This was a ghastly crime committed against innocent First Nations people, not as a result of a reprisal for spearing a white man, killing his livestock or stealing his property, but senseless killings because they could.

The callous perpetrators were tried at the Supreme Court in Sydney on 15 November 1838 (Elder 2003) where evidence of the massacre and the guilt of the men seemed so overwhelming that Justice Burton, in summing up the case against the men, told the jury:

> It is clear the most grievous offence has been committed; that the lives of nearly thirty of our fellow creatures have been sacrificed, and in order to fulfil my duty I must tell you that the life of a black is as precious and valuable in the eye of the law, as that of the highest noble in the land (p. 92-93).

As was the prevailing view of Aboriginal people in those frontier times 'the gentlemen of the jury took twenty minutes to decide the accused were not guilty' (Clark, Cathcart et al. 1993 p. 204) and typically of the blasé approach to views on most things Aboriginal, within a week one member of the jury was telling his friends:

> I look on the blacks as a set of monkeys, and I think the earlier they are exterminated the better. I know well they are guilty of murder, but I, for one, would never consent to see a white man suffer for shooting a black one!

Elder (2003 p. 94) reported the men had unofficially pleaded guilty to the Myall Creek massacre killings but did not know it was a crime to kill blacks as it was viewed by them as a common frontier sport:

> Their defence of their actions, a pitiful plea on their part, was that, because killing Aboriginal people was a common frontier sport, they did not realise that it was illegal. They certainly did not realise that it carried the death penalty. It had never occurred to these men, brutalised by the values of the society in which they lived, that the real rule of law actually existed. They were victims of their society; a society which suffered ethical schizophrenia. Laws were bent into fantastic shapes by expediency and a class-ridden autocracy.

History was in the making for this highly publicised case as Broome and Broome (2010 p. 46) reported after the second trial of *R v Kilmeister (No 2)* 'prosecuted tenaciously by Attorney-General John Plunkett, and a vigorous and popular defence of the accused, seven of the stockmen were hanged for murder'. However, history was made in the Myall Creek massacre case only in so far as it related to multiple convictions and executions of white men for the killing of Aboriginal people. Be that as it may, 18 years earlier John Kirby (cited in Ford 2010 pp. 224-225) was indicted in case *R. v. Kirby and Thompson [1820] NSWKR 11; [1820] NSWSupC 11* for the

wilful murder of Burragong, alias King Jack, a native chief of Newcastle, on the 27th of October 1820 and executed on 19 December later that year. His co-accused John Thompson was acquitted of the murder of Burragong, the important Aboriginal leader and ally of the penal settlement officials.

Whilst the Myall Creek Massacre hangings created uproar with settlers in the colony in 1838, Roger Therry was writing his name in the history books as one of the first legal figures involved in the case to champion the rights of Australia's First Peoples in such emphatic fashion. Therry was later appointed a judge and often referred to his time (cited in Connors 2008 p. 87) as the legal representative who 'assisted Plunkett with the prosecution of the second Myall Creek trial in 1838 and wrote of these horrific events with compassion in his *Reminiscences*'.

However, just like Justice Gaudron who had her social justice credentials dented with her racially insensitive 'Pinky's Cement-Mixer' analogy used to dismiss my application on seeking Special Leave to Appeal to the High Court (Hagan 2005), so too did Judge Therry with his uncharitable racial 'marked inferiority of mind' reference to feared warrior leader of the Moreton Bay district (Brisbane) Dundalli in the trial *R v Dundalli* for the murders of William Boller and Andrew Gregor in November 1854 (Therry, cited in Connors 2008 p. 96).

> According to Therry, despite evidence that Dundalli spoke English well, he disrupted the trial by beckoning to a settler he recognised in the court and asking him to offer the judge a bribe of sixpence. At another stage in the hearing he addressed the judge directly, ostensibly offering to row him back to Sydney. Disrespect for the solemnity of court ritual and for his dignity as judge was deeply disturbing for Therry. He failed to recognise these incidents as a rejection of the court's authority. In his view they could only be distressing … 'indications of marked inferiority of mind'.

Connors (2015 pp. 191-192) wrote of Therry recommending the release of Mickaloe in 1851 and the imprisonment of young Mickie in 1853, despite the Aboriginal warriors respective death sentences, speaks volumes of a progressive thinking judicial officer during the frontier years. However when 'confronted by a man whose

opposition and disdain could not be silenced, Therry responded with reciprocal contempt; he failed to recognise any integrity in Dundalli's position and his memoirs decried Dundalli's lack of intelligence and his "savage ferocity"' and sentenced him to death.

Unless the public is aware of these particular instances of their celebrated judges in the social justice area, they will be none the wiser and continue to revere their body of judicial work. More to the point, the dismissal by Gaudron, in particular, of the word 'nigger' as not being offensive if used in the context of a person's nickname, sends the wrong message to sympathetic judicial officers, specifically those who may wish to adopt an alternate position, and to the general public more broadly that it is perfectly fine to use the N-word in that context in this country.

A more distressing and somewhat dangerously sinister observation can be drawn by the parallel Myall Creek Massacre case of *R v Kilmeister (No 2)* [1838] NSWSupC 110 and the Nigger Brown case in *Hagan v Toowoomba Sports Ground Trust* of the cohesive impact of the media in influencing judicial determinations.

Governor Sir George Gipps, in *R v Kilmeister (No 2)* chose not to be influenced by the pleas for clemency from the Editor of The *Sydney Morning Herald* (cited in Marsh 2015 p. 102) who wrote that: 'their executions would be "nothing short of legal murder" and if carried out would "incite an actual war of extermination" against the natives', for the governor followed through with the executions of the seven convicted men in the Myall Creek massacre case on 18 December 1838.

Clearly the execution of the seven men provided the window of opportunity for further and more innovative acts of wanton cruelty against Australia's First Peoples: 'As the wilder blacks were incited into more and more deeds of violence to the property of settlers, shepherds, hut-keepers and stockmen shot them with not more compunction than they shot a dog. The more ruffianly and ferocious among the whites got rid of troublesome Aborigines by poison' (Clark, Cathcart et al. 1993 p. 205).

Despite the strong call on Governor Gipps' part to proceed with the execution as the 'peak in his political courage' (Kercher 1995 p. 14), it is clear to all who followed this extraordinary case that his failure to prosecute the remaining four perpetrators in the case is evident that he was influenced by the media and public opinion as identified by Marsh (2015):

> … the prosecution of the remaining four men who had been arrested for the events at Myall Creek was never ultimately brought to trial. The given reasoning behind this administrative decision was that evidence was required from an indigenous man who was present at the massacre, but due to his inability to validly give an oath he could not be brought before the court.
>
> On reflection this reasoning however seems incongruous with the result of R v Kilmeister (No 2), where seven men were successfully convicted on what would be exactly the same evidence, even in the absence of this witness (p. 103)

Justice Gaudron could have asked one of her assistants to enquire about the source of my funding if she thought it came from the ALS (Burton 2010) – or simply have picked up the phone and talked directly to my senior counsel, Ernst Willheim, who she was acquainted with – but instead she listened to the negative commentary from all media sources reporting on my case and fell in line with their position.

Justices Therry and Gaudron, from two contrasting eras, 'were victims of their society; a society which suffered ethical schizophrenia' in their dealings with First Australians in much the same manner as Elder (2003 p. 94) described the accused in the Myall Creek massacre. Their decisions in these cases were blatantly influenced by community xenophobia; a xenophobia, Australia's most influential Indigenous female politician, Linda Burney MP (Burney 2009) says 'has manifested in more insidious forms of political and institutional racism while simultaneously residing in a kind of malign neglect by the rest of the population'.

Australia's highest ranked Indigenous public servant, Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda, lashed out the Australian judicial system that enabled one of its judges to hand down a manifestly light sentence for a

non-Indigenous Australian in a fatal crime committed against an Indigenous child. ABC News reported 'Mathew Alexander was given an 18-month suspended sentence and six months in home detention for the incident, which killed eight-year-old Indigenous boy Jack Sultan-Page' (Daly 2015) in Darwin that Mick Gooda said seemed to be light for the crime, 'compared to what happens to our people'. Daly (2015) reported Mick Gooda, in reference to the ABS figures that reveal Indigenous Australians make up 86 per cent of the NT adult prison population, saying it was 'hard to get away from making the conclusion' that there appeared to be different laws applied to Indigenous and non-Indigenous people, especially given Alexander's sentence. James (2015), reporting on the same tragic case, wrote that despite Alexander's sister providing evidence that he was 'heavily affected' by methamphetamine at the time of the accident in November 2014, 'Justice Southwood said he had taken into the account the fact Alexander (23) was still a "young man" with a good record and that he had "clearly panicked and fled"'.

A year on from the baffling judicial decision NT Attorney-General John Elferink was adamant the NT Department of Public Prosecutions would not appeal the sentence. Clarke (2015) reporting on the case quoted Elferink saying the DPP Director Jack Karczewski QC found Justice Stephen Southwood sentencing to be fair.

> I asked the head of the DPP here to review whether or not the sentence was manifestly inadequate. The head of the DPP has indicated that he is disinclined to appeal it on the grounds that the sentence was adequate in relation to the offence for which he was found guilty.

Clarke (2015) also reported Attorney-General Elferink rejected Mick Gooda's claims of racial divide in judicial sentencing patterns of white and Aboriginal offenders when he said: 'The justice system in the Northern Territory delivers its justice without fear or favour and to assert that there is some racial motivation in relation on the part of the judge is something that I reject outright.' One wonders the outcome if the eight-year-old boy killed in this accident was white and the driver – high on methamphetamine at the time of the accident – was Aboriginal? Would the judge give an Aboriginal offender an 18-month suspended sentence and six months in home

detention in a fatal hit-and-run crime committed against a white child riding his BMX bike on a suburban street?

To prove Justice Southwood's judicial faux pas was not a one off for Northern Territory Aborigines, there was another sensational court room blunder four years earlier in the same city of Darwin, this time by the jury, of a 'not guilty' verdict of a watch-house police auxiliary worker named Campbell who was accused of acting inappropriately to Aboriginal women. Shae McDonald (2009) reported the jury took just over 30 minutes to reach their verdict on the eighth day of the trial:

> Mr Campbell was accused of forcing two long-grassers (homeless Aboriginal people who live in long-grass on the outskirts of towns) – taken into protective custody last January for drunkenness – to perform oral sex on him.
>
> He was alleged to have masturbated in front of a third woman after she refused his request. CCTV footage used as evidence showed Mr Campbell leading the women into a stairwell, where it was alleged the incidents took place.
>
> The court heard there was no surveillance inside the room.
>
> The jury decided the footage and inconsistent evidence given by the three women was not enough to convict Mr Campbell, who was described by character witnesses during the week as friendly and respectful towards women.

Why is the evidence of three witnesses not sufficient to gain a guilty verdict? Could it be that in this instance the ethnicity of the witnesses and the fact they resided at 'no fixed address' might have influenced the jury? Even when Aboriginal people are not facing the threat of incarceration they are confronted almost daily with media reports that to them show a criminal justice system that acts against them, not for them. Would the jury make the same ruling if the watch-house police auxiliary worker was Aboriginal who led three white homeless women or white women from a Caravan Park or public housing address to perform oral sex on him inside the watch-house?

The Honourable Wayne Martin, Chief Justice of Western Australia, who, in his keynote address to the 2009 Australia and New Zealand Society of Criminology Conference in Perth attributed the overrepresentation of Indigenous people in the criminal justice system to 'a combination of changes in offending behaviour and changes in judicial behaviour, including denial of bail and greater use of imprisonment' (2009). Chief Justice Martin also attributed in his keynote address the salient point that 'there is a real danger in this environment (of sensational media coverage on acts of crime) that both judges and politicians will take the views of the vocal minority as representative of the views of the majority' (2009). This extraordinary insight by Chief Justice Martin of the potential of his judicial colleagues to be affected by external influences gives rise to the following contentious question: Are judicial determinations involving Indigenous Australians tainted by subliminal bigotry? That has been my experience and is the daily experience of most members of my community, as it is with most Indigenous communities around the nation that I have cause to come in contact with to speak on this matter.

Magistrate John Neil's (Childs 2015) faux pas, reading from his notes in Darwin's Court Two into the second day of hearing charges against an Indigenous man of drunkenness and indecent exposure: 'Next saw Abo man,' he said, adding: 'Forgive me, that's my note…', would lend some weight to this line of inquiry. It would appear magistrate Neil wrote disparagingly of the accused in a case he was presiding over and casually used the descriptor 'Abo' knowing its offensiveness. However, it did not bother him writing Abo in the comfort of his chamber, and only had cause to allude to an oversight – not an apology – for his faux pas in this instance inside a courtroom setting where journalists were recording his considered words.

Justice John Dowsett (2010), one of the three presiding judges hearing my appeal to the Full Bench of the Federal Court in *Hagan v Toowoomba Sports Ground Trust (2001),* in his paper *Prejudice – the judicial virus* opined, 'Recognition that a judgement may be infected by prejudice is not new, nor is such recognition an insight that is peculiar to lawyers or judges. Society has been aware of the risk for as long as we have been judging one another' (p. 40). With those strong sentiments and of his views that 'a judge will not be aware of how his or her own background has shaped, and continues to shape, views, attitudes and conduct' (2010 p. 40), Justice Dowsett

and his peers knowingly or inadvertently continue to imprison Indigenous offenders at a disproportionate rate to non-Indigenous offenders (Weatherburn and Holmes 2010).

Roberts (2003 p. 214), in the same vein, contends that 'Judges are not entirely impervious to the tides of popular and professional opinion, and these forces alone may have influenced the extent to which judges use imprisonment as a sanction for Aboriginal offenders'.

Governments of all persuasions, on heeding the message of community expectations for them to be tough on crime (Hingston 2012), are unduly influencing the rising tide of Indigenous offenders gaining custodial sentences as opposed to the option of bail, while white offenders continue to be treated leniently. Steels and Goulding (cited in Craven, Dilton et al. 2013 p. 130) argue that when it comes to crime and community safety, as it relates to Indigenous Australians, Australia's mainstream conversation generally adopts the line of talking 'tough on crime'. Despite a tendency by civic leaders to blame Aboriginal people for the vast majority of crime in rural communities, Jobes, Donnermeyer et al. (2012 p. 236) asserts that 'lower class whites are also a problem' that should not be underestimated.

Indigenous Australians are impacted by Whiteness in every facet of our daily lives as we 'participate in a society not of our making under conditions not of our choosing' (Moreton-Robinson 2000 p. 164). That is Whiteness in action, as I know it, as experienced by my father and his father before him and as witnessed without complaint by his mother Trella, all those years ago. Alcoff (2015 p. 12) contends 'Whiteness was an idea that was promoted, yes, but it had to be shaped by those who ascribed to it to fit their own experience and understanding'.

The unfavourable treatment of members of the judiciary to First Nations People – to fit their own experience and understanding – has its history of white boat peoples' arrival on our land back in 1788. To disguise the theft of land from our ancestors the boat people and their descendants wrote their own version of history of lawful settlement on an empty land through their legal doctrine of 'terra nullius'. To then morph from an identifiable European diaspora status on stolen land to a more favourable self-acclaimed sovereign proprietorship title, a rapidly expanding white

Australia conveniently and expeditiously used whatever means available to control those million plus people of black skin who were on their 'empty land'. Over two hundred and twenty plus years of occupation the white population passed on, through the generations, the means to hold sway over those black people who somehow appeared on their land, at first contact, through the power of the gun and liberal usage of poison initially to more sophisticated – yet destructive – means through the media and politicians in collusion with the judiciary soon after settlement. This perfect Whiteness blueprint confirms my hypothesis: *That there is a nexus between ambiguous race-based judicial determinations and community xenophobia*.

Chapter 5: Conclusion

5.1 Validation of hypothesis

The object of my dissertation was to identify by name the subject of my research, to situate it by location, describe its characteristics, to deconstruct its multi-layered facets and report the upshot and ramifications of my findings on it. To validate my hypothesis: *That there is the nexus between ambiguous race-based judicial determinations and community xenophobia*, I had to narrow the scope of my study by identifying civil cases that do not have the usual populist bias of punishment-to-fit-the-crime logic associated with common assault, property damage or drug abuse of Indigenous offenders (Finnane and Richards 2010, Lau, Marion et al. 2012). I chose to chronicle my family's history, the Mundingburra by-election controversy and the E.S. 'Nigger' Brown Stand civil case, as my principal research topic, to make a plausible correlation between inherent racial sentiment that exist within a typical Australian community and the part collective familial sentiment plays in influencing judicial decision-making.

The motivation for my dissertation was precipitated in my treatment by the highest ranking judicial officers in the nation who presided over my case to remove the N-word from the E.S. 'Nigger' Brown Stand: Justice Drummond on application to the Federal Court (2000); Justices Ryan, Dowsett and Hely on appeal to the full bench of the Federal Court (2001); and Justices Gaudron and Hayne on application Seeking Special Leave to Appeal to the High Court (2002). The blasé manner in which they expeditiously and expediently dispensed with my legal team's considered argument collectively was breathtaking in its simplicity. The analogy of 'nigger head' reef by Justice Drummond and 'Pinky Cement-Mixer' by Justice Gaudron (Hagan 2005) to rule the N-word could be used in other ways without causing offense dispelled any semblance of faith I had in their ability to impartially deal with my application before them as an Aboriginal Australian. As a result of my inauspicious experience with these senior judicial officers, I sought subsequently to validate the possibility that my adverse experiences on a race-based issue with various levels of the Australian judiciary were not isolated occurrences.

To demonstrate a pattern of xenophobic outlook by white Australia to First Nations People I chronicled the life journey of my family from 1895, when my grandfather Albert Hagan was born, through to the present where his descendants still feel the barbs of white society whenever they dare to challenge the status quo on societal codes of conduct (Hagan 2005). The exposé on my family's journey was paralleled with recorded instances of flagrant judicial bias towards First Nations People from the frontier years where law and order was determined and enforced by those holding the gun (Elder 2003, Reynolds 2012), through to custodial sentences by judicial figures today whose ruling on the worth of defendants is capricious at best and racist at worst (Cunneen, Allison et al. 2014).

The findings of these lines of inquiry clearly demonstrate that my experience was not a one off, but rather just a tip of the iceberg of a scourge of staggering proportions that has had significant consequences, many fatal, for those on the receiving end of racially biased judicial sentencing (Weatherburn 2010), recorded as black deaths in custody statistics. By applying Whiteness theory (Frankenberg 1993, Moreton-Robinson 2000) to demonstrate its potency in ensuring non-white Australians remain 'outside' the dominant group, I was able to juxtapose community xenophobia with judicial racial bias as an innate contributing factor to the over representation of First Nations People in the criminal justice system (Bond and Jeffries 2012). Whiteness bestows an 'invisible knapsack' of white privileges that McIntosh (1988 p. 2) refers to as a process of simply conferring 'dominance because of one's race or sex'.

Being on the receiving end of racist vitriol in public by bigoted whites or in courtrooms being subtly demeaned by eminent white judicial figures with the eloquence of satire at the opposite end of the social spectrum, I am patently aware of what Whiteness looks, feels and tastes like. I can report from first-hand experience that Whiteness, and all that is propagated from it, is not imagined or imbued by the privileged few, but rather a permeation of an invisible energy source explicit to all white people and pliable in all circumstances when requiring an uplift to erase a negative thought of racial inferiority or conversely to assert racial superiority.

High Court Justice Mary Gaudron's introspection of herself as a pink person in making the determination in my application for Special Leave to Appeal to the High Court proves that she takes white dominance for granted and has no understanding of herself as a racialised woman (Frankenberg 1993). Incongruously, Gaudron's moored position in this race-based case was inconsistent with her normal unwavering stance on gender equity and social justice matters that speaks volumes of her vacillating under the weight of community expectations and xenophobia.

In many ways Justice Mary Gaudron reminds me of Judge Roger Therry (Connors 2008) who assisted the prosecution of the 2nd trial of the Myall Creek Massacre (Clark, Cathcart et al. 1993) in which seven white men were tried and hanged for the murder of 28 Aboriginal men, women and children on 27 November 1838, in an era when the killing of Aboriginal people had not previously been seen as a punishable offence (Stubbins 2001). Judge Therry wrote his name in the history books as one of the first legal figures to champion the rights of Australia's First Peoples in much the same vein as the celebrate social justice advocate Justice Gaudron did in the Mabo and Wik judgements 150 years later.

The parallel journeys of these eminent judicial figures, of different eras, are strikingly similar. Connors (2015 pp. 191-192) wrote of Therry recommending the release of Mickaloe in 1851 and the imprisonment of young Mickie in 1853, despite the Aboriginal warriors respective death sentences, speaks volumes of a progressive thinking judicial officer during the frontier years. However when 'confronted by a man whose opposition and disdain could not be silenced, Therry responded with reciprocal contempt; he failed to recognise any integrity in Dundalli's position and his memoirs decried Dundalli's lack of intelligence and his "savage ferocity"' before sentencing him to death.

Justice Gaudron was part of the majority judgement in *Mabo v Queensland (No. 2)* in 1992 and *Wik Peoples v The State of Queensland* in 1996 that so infuriated the majority of white Australians as they debunked the myth of terra nullius and ruled that native title can coexist with pastoral leases in Australia respectively (Burton 2010). However, Gaudron changed her approach on Indigenous specific cases by voting against Aboriginal women of the Ngarrindjeri tribe in *Kartinyeri v*

Commonwealth when they challenged John Howard's Coalition Government legislation allowing the building of the Hindmarsh Island Bridge. The Ngarrindjeri women expressed a strong secret women's business belief that building Hindmarsh Island Bridge in South Australia would render them barren (Weiner 2002, van Krieken 2011). Gaudron also voted against my application in *Hagan v Toowoomba Sports Ground Trust* when I sought Special Leave to Appeal to the High Court (2002) on lower court rulings that the word Nigger in the E.S. 'Nigger' Brown Stand was not offensive in the context in which it was erected.

When past and present day benchmarks of judicial officers performing remarkable feats of service to the advancement of Aboriginal Australians, such as Judge Roger Therry during early years of white settlement and of Justice Mary Gaudron in recent times, are identified as displaying significant racial bias in performing their influential roles on the bench, then it follows that lesser mortals in the judiciary would not be immune to exhibiting similar traits in their line of work.

5.2 Judges being out of touch

This dissertation established other judicial figures that – in line with my principal case study on the E.S. 'Nigger' Brown Stand controversy – also do not have a problem with the word 'nigger' being used freely in the Australian vernacular.

In 2010 Queensland Judge Michael O'Driscoll (cited in Broatch 2010 p. 9) dismissed a case against a Gold Coast pensioner, Denis Mulheron for using the terms 'nigger' and 'sand-nigger' in a fax to a local politician finding that 'they were not offensive to a reasonable person'. Glen Norris (2014) highlighted, in his *Courier Mail* article, problems with Queensland judicial representatives, including O'Driscoll, being so out of touch with average Queenslanders that the new Attorney-General Yvette D'Ath is considering appointing an independent watchdog to handle complaints against the judiciary following a spate of controversial decisions.

With the current batch of state and federal politicians – who are charged with judicial appointments – leaning comparably to the 'right' of politics into the 21st Century I hold out little hope of future judicial appointments comprising a significant

representation from First Nations People, or their noted non-Indigenous supporters, to counter the unhealthy disproportion of inmates from our racial group in the prison system (Weatherburn 2014).

As a prized vocational pathway the competition from prospective law candidates for new judicial appointments is fearlessly contested. Thinking and acting the same as those who occupy senior positions in the judiciary is a vital prerequisite of appointment to the bench that is not to be taken lightly by lawyers wishing to make that ultimate transition. That being the case, and despite Aboriginal magistrate appointments in recent years that fall short of double figures and even smaller numbers of their white colleagues who are genuinely empathetic to our unique circumstances, the vast majority of judicial officers will continue to act in the best interest of their senior members and that which reflects community standards. And so it goes on and on with the old adage of the more things change the more they stay the same. Just as Indigenous Australian's legal rights were routinely dismissed in early settlement years so too are our rights subordinate to the rights of mainstream Australians in courtrooms around the nation today.

5.3 Judges need to take ownership of their inherently racist outlook

If the judiciary as a national collective do not take ownership of their inherently racist outlook in life, especially in relation to how they perceive Indigenous Australians who appear before them in court, they will singularly be the most pivotal group to adversely shape the future for First Nations people in this country. At the current rate of incarceration, it will not take long before every Aboriginal family in this country will have a familial link to someone who is behind bars. What message is that disastrous glimpse into the future likely to have on Indigenous youth who are less a mother or father, or both at the same time, in their lives because of ingrained racism that has permeated the judicial ranks and is showing no sign of that incorrigible attitude abating any time soon? Our world will be much the poorer if the judiciary, as a collective, do not break the shackles of a racially intolerant past their forebears promoted with fervour and to which they today embrace with unabridged devotion.

The sector that will benefit most by a recalcitrant bigoted judiciary who choose to maintain their philosophical status quo on everything Indigenous will be those connected entrepreneurs who will be contracted by state governments to build new prisons to house the ever growing Aboriginal juvenile, female and male prison populations. For it is the judiciary that determines who has transgressed their white community code of conduct, set by their forebears, and to the extent to which those charged will receive custodial sentencing when appearing before them.

My dissertation affirms *that there is a nexus between ambiguous raced-based judicial determinations and community xenophobia in Australia*. And further that all non-Indigenous Australian judicial officers are inherently racist; infused with Whiteness, and assumptions of white privilege premised on their nurturing process by family, friends and associates who have an unwavering self-belief of their superiority over Indigenous Australians.

Western Australia's Chief Justice Martin (2009) attributes in a keynote address the salient point that sensational media coverage on acts of crime lead judges and politicians to enact the views of the vocal minority. That frank admission is publicly shared by Federal Court Justice John Dowsett (2010), one of the three presiding judges on my appeal to the Full Bench of the Federal Court in *Hagan v Toowoomba Sports Ground Trust* (2001), who acknowledges that prejudice has often influenced his judgments and that of his colleagues.

Indigenous Australians are at an immense handicap on three fronts when it comes to experiencing entrenched community xenophobia: racial vilification on a daily front from bigoted members of the community (Cunneen, McDonald et al. 1997); heavy handed and lethal force, on occasions, by police (Weatherburn and Holmes 2010); and bias at all levels of the judiciary on race-based determinations (Willheim 2003, Hagan 2005).

The assertion of Lipsitz (1998 p. 4) that 'Racism has changed over time, taking on different forms and serving different social purposes in each time period' resonates fittingly in Australia where judicial officers are doing their utmost at representing the prevailing mood of a static racist disposition of their populace. A population, I might

add, fixed in the mindset of a ‘white Australia’ (Murphy 2013) of a bygone era, demonstrating generation after generation a dogmatic propensity to the maintenance of that bigoted status quo. If we as a mature nation wish to eliminate racism from our courts the judiciary membership must divest themselves of their racist attitudes to Aboriginal people who have cause to appear before them. The first step in achieving this utopian position is for members of the judiciary to admit *that there is a nexus between ambiguous race-based judicial determinations and community xenophobia*.

Members of the judiciary are – like the rest of Australians – creatures of habit, ritual and repetition. Only time will reveal if the will of Australia’s white judiciary to change inherent racist traits from their psyche or if the power of xenophobic indoctrination passed down through generational nurturing habits stand the test of time in their profession for the next 220+ years? The answer to that vexed question will provide the retort for members of the ‘white’ judiciary who are merely the arbiters of breaches of societal norms set in stone by their ‘white’ parliaments.

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